

No. 2313

2

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

THE UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Plaintiff in Error,

vs.

T. H. MOORE,

Defendant in Error.

On Writ of Error to the District Court of the
United States For the District of Oregon.

TRANSCRIPT OF RECORD.

RECEIVED

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Defendant in Error.

**Names and Addresses of Attorneys
upon this Writ:**

For the Plaintiff in Error:

F. S. Senn,

Yeon Bldg., Portland, Ore.

For the Defendant in Error:

Giltner & Sewall

Yeon Bldg., Portland, Ore.

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*In the District Court of the United States for the
District of Oregon.*

Be It Remembered, That on the 17 day of April, 1912,
there was duly filed in the District Court of the
United States for the District of Oregon, a Tran-
script on Removal, in words and figures as fol-
lows, to wit:

[Complaint.]

*In the Circuit Court of the State of Oregon for the
County of Multnomah.*

T. H. MOORE,

Plaintiff,

vs.

UNION.. BRIDGE.. & ..CONSTRUCTION.. COM-
PANY, a corporation,

Defendant.

Plaintiff above named, for cause of action against
the defendant above named, alleges:

I.

That the defendant now is and was during all the
times herein mentioned a corporation duly incorpor-
ated, organized and existing under and by virtue of
the laws of the State of Missouri, and as such was
and is doing business in the State of Oregon with its
principal office in the City of Portland, Multnomah
County, in said State.

II.

That during all the times herein mentioned, the
said defendant was engaged in building a bridge

known as the Broadway Bridge, across the Willamette River in the City of Portland, in Multnomah County, Oregon, and the said plaintiff was employed by the said defendant to assist in the construction of said bridge and was so employed during all the times hereinafter mentioned.

III.

That the said defendant, prior to the 2nd day of October, 1911, had constructed, and at all the times herein mentioned had possession of and was in control of, a staging at the east end of said bridge on the east bank of said river in said City, County and State, to be used by the employees of this defendant as a means of egress and ingress from and to the said bridge and bank of the river, for the purpose of carrying material from the land to the said bridge.

IV.

That the said staging was constructed by defendant out of planks which had been used for cement forms and were incrustured with a white mixture which completely covered them and made them appear white to the eye of any one passing over the same; and through one of said planks, during all of said times, there was a sharp nail protruding, with the sharp end up, which said nail was also covered with said white mixture (and was in such board when said staging was built,) which made it impossible for any one to see or detect it in passing over the said staging on account of the fact that the said staging and said nail were of the same color.

V.

That on or about the 2nd day of October, 1911, the superintendent and foreman of the said defendant ordered the said plaintiff, who was working on said bridge which was in the course of construction, to pass over the said staging and carry some lumber from the bank of the river to and upon said bridge; that pursuant to said order and while this plaintiff was obeying said order and was passing over the said staging for the purpose of carrying said lumber from said bank to said bridge, the said plaintiff stepped upon the said nail and it passed through the sole of his shoe on his left foot and penetrated his left foot, on account of which blood poison set in, in his said foot, and in order to save his life it became necessary to amputate his said foot and his said foot was amputated at the instep; that on account of said nail penetrating his said foot, and on account of said blood poison and said amputation, said plaintiff suffered and will suffer great physical and mental pain and has been permanently injured and has been incapacitated from working and will be incapacitated from working in the future, to his damage in the sum of \$35,000.00.

VI.

That it was the duty of said defendant to furnish said plaintiff a safe place to work and to keep the same in a reasonably safe condition; also to carefully select and inspect and test all the wood or lumber used in the construction of said staging so as to detect any defects, and also to use every device, care and pre-

caution which it was practicable to use for the protection and safety of life and limb, limited only by the necessity for preserving the efficiency of said staging, and without regard to the additional cost of suitable material.

VII.

The plaintiff further alleges that the said accident would not have happened if the defendant had furnished the plaintiff a safe place to work and kept the same in a reasonably safe condition, and had carefully selected, inspected and tested all the lumber used in the construction of said staging, and also if defendant had used every device, care and precaution which was practicable to use for the protection and safety of life and limb, which would not destroy the efficiency of said staging.

VIII.

Plaintiff alleges that in causing the said injury to plaintiff's foot, and in causing blood poisoning, amputation, suffering and damages as aforesaid, the defendant was then and there reckless, careless and negligent in the following particulars, to-wit: that the said defendant then and there failed to furnish a safe place to work, in furnishing the said staging for plaintiff to walk over, with a sharp nail protruding through the upper surface, which it was impossible to see when walking over said staging in the performance of his duties on account of the same being white and of the same color as said staging; also in failing to carefully select, inspect and test all the wood or lumber used in the construction of said staging so as to detect any

defects; and also in failing to use every device, care and precaution which it was practicable to use for the protection and safety of life and limb, limited only by the necessity for preserving the efficiency of said staging, and in not using suitable material and free from nails.

IX.

That on and before the 2nd day of October, 1911, the plaintiff was a strong, healthy, active man, 46 years old, working as a common laborer and earning \$3.00 per day, and had steady employment, and had a life expectancy of 23.81 years. That by reason of said injury and acts of negligence of said defendant, the plaintiff is injured for life and is deprived of his livelihood as herein stated.

WHEREFORE, plaintiff demands judgment against the defendant for the sum of \$35,000.00, and the costs and disbursements of this action.

GILTNER & SEWALL,
Attorneys for Plaintiff.

[Petition for Removal.]

*In the Circuit Court of the State of Oregon for the
County of Multnomah.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

To the Honorable Circuit Court of the State of
Oregon for Multnomah County.

Your petitioner, the Union Bridge and Construction Company, a corporation, organized and existing under and by virtue of the laws of the State of Missouri, respectfully shows to this Honorable Court, that it is the defendant in the above entitled action. That said action is of a civil nature and the matter in dispute in this action and cause exceeds the sum and value of Three thousand Dollars, exclusive of costs, to-wit: the sum of Thirty five thousand Dollars.

That the controversy herein is between citizens, inhabitants and residents of different states. That the said T. H. Moore plaintiff above named, was at the time of the commencement of this action and ever since has been and still is a citizen, resident and inhabitant of the State of Oregon, and your petitioner, the Union Bridge and Construction Company, was at the time of the commencement of said cause and action and ever since has been and still is a corporation organized and existing under and by virtue of the laws of the State of Missouri and is not a citizen, resident or inhabitant of the State of Oregon.

That your petitioner desires to remove this action before the trial thereof into the District Court of the United States for the District of Oregon, holden at Portland, Multnomah County, Oregon, and your petitioner offers herewith good and sufficient bond and surety for its entering into said District Court of the United States a copy of the record in this cause and action and for paying the costs that may be awarded by the said District Court of the United States, if said District Court shall hold or find that this action or

cause was wrongfully and improperly removed there-to and your petitioner herein prays that the said sur-ety and bond herein may be accepted and that the said action may be removed into the said District Court of the United States as aforesaid, pursuant to the statutes of the United States in such cases made and provided and that no further proceedings may be had herein in this Court and that your Honorable Court will make an order approving said bond and an order of removal of said action and to that end the defendant and your petitioner will ever pray.

RAUCH & SENN,
Attorneys for Petitioner and Defendant.

[Order of Removal.]

*In the Circuit Court of the State of Oregon for the
County of Multnomah.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

The defendant herein having within the time provided by law filed its petition for the removal of this action to the District Court of the United States for the District of Oregon and having at the same time filed its bond in the sum of \$500 with good and sufficient surety pursuant to statute and conditioned according to law and notice to plaintiff of this application having been given and the defendant appearing

by its attorneys, Rauch & Senn.

NOW THEREFORE this Court does hereby accept and approve said bond and finding the facts set forth in said petition to be true does hereby order and decree that this action and cause be and the same is hereby removed into the District Court of the United States for the District of Oregon and that all other or further proceedings of this action or cause in this Court be and the same are hereby stayed and the Clerk of this Court is hereby directed to transmit forthwith to said District Court of the United States for the District of Oregon, a certified transcript of all the record herein.

Dated March 28, 1912.

J. P. KAVANAUGH,

Judge of the above entitled Court.

And afterwards, to wit, on the 22 day of April, 1912, there was duly filed in said Court, an Answer, in words and figures as follows, to wit:

[Answer.]

*In the District Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

Comes now the defendant and for answer to plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

Admits paragraph 1 of plaintiff's complaint and also paragraph 2 of said complaint but denies paragraphs 3, 4, 5, 6, and 7, and 8 and 9 of plaintiff's complaint and the whole thereof, except that defendant admits that plaintiff was in its employ on or about the 2nd day of October 1911.

For a first, separate and further answer and defense to plaintiff's complaint defendant alleges:

I.

That on or about the 2nd day of October 1911 and for a long time prior thereto plaintiff had been in its employ working on what is commonly known as the Broadway Bridge. That plaintiff was an experienced and capable employee and knew, understood and appreciated all the risk and danger of working in and about said bridge aforesaid, and at the time of the alleged accident and injuries complained of by plaintiff in his said complaint, plaintiff assumed all the risk and danger of his employment.

For a second, separate and further answer and defense to plaintiff's complaint defendant alleges:

That on or about the 2nd day of October 1911 and for a long time prior thereto plaintiff had been working for this defendant on what is commonly known as the "Broadway Bridge" in the City of Portland. That working with and about plaintiff were numerous other fellow servants and fellow employees of this plaintiff. That if said accident and injuries were due to the carelessness or negligence of any one other than this plaintiff it was due to the carelessness and negligence

of said fellow servants and fellow employees of this plaintiff for which this defendant is not responsible.

For a third separate and further answer and defense to plaintiff's complaint defendant alleges:

I.

That plaintiff was in its employ on the 2nd day of October 1911 and for a long time prior thereto had been in its employ and was a capable and competent workman and fully understood and appreciated all the risks and hazards of his employment. That said 2nd day of October 1911 plaintiff while performing his duties carelessly and negligently and without paying any heed or attention to what he was doing or where he was stepping and fully knowing that the lumber on which he was stepping had been part of a concrete form and that same had nails in it, stepped on a certain plank which had a nail in it, and which plank was then and there lying on the river bank. That said accident and injuries resulted wholly from plaintiff's own carelessness and negligence and was not the result of the carelessness or negligence of this defendant and so far as this defendant is concerned said accident was wholly accidental, unavoidable and could not have been foreseen by the exercise of ordinary care.

WHEREFORE defendant prays that the complaint on file herein be dismissed and that it have judgment for its costs and disbursements herein.

RAUCH & SENN,
Attorneys for Defendant.

[Endorsed]: Filed April 22, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 22 day of April, 1912,
there was duly filed in said Court, a Reply in
words and figures as follows, to wit:

[Reply.]

*In the District Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

Comes now the plaintiff and for reply to the an-
swer of the defendants on file herein denies each and
every allegation contained therein and the whole
thereof.

Wherefore, plaintiff prays judgment as demanded
in his complaint.

GILTNER & SEWEL,
Attorneys for Plaintiff.

[Endorsed]: Filed April 22, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on Wednesday, the 16 day of April, 1913, the same being the 39 Judicial day of the Regular March 1913 Term of said Court; Present: the Honorable CHAS. E. WILVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Judgment.]

*In the District Court of the United States for the
District of Oregon.*

No. 5568.

T. H. MOORE,

v.

UNION BRIDGE & CONSTRUCTION CO.

This cause came on regularly at this time, pursuant to continuance; jury and attorneys for respective parties present as heretofore; whereupon the jury having agreed return into court their verdict as follows: "We, the jury in the above entitled action, find in favor of the plaintiff and against the defendant, and assess his damages in the sum of \$9000.00. E. A. McPherson, Foreman."

Whereupon, it is Considered, Ordered and Adjudged that the said plaintiff T. H. Moore, have and recover of and from the defendant Union Bridge and Construction Company the sum of Nine Thousand Dollars (\$9000.00) together with his costs and disbursements taxed herein at \$104.55 it is further ordered that execution may issue herein.

[Bill of Exceptions.]

*In the District Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

BE IT REMEMBERED that the above entitled cause came on for hearing in the District Court of the United States for the District of Oregon on April 17th, 1913, before the Honorable CHARLES E. WOLVERTON, District Judge, plaintiff appearing in person and by his attorney R. R. Giltner of Giltner & Sewall and defendant appearing by F. S. Senn its attorney and a jury having been duly impaneled, the following proceedings were had being all the proceedings had therein, and the following being all the testimony taken including the instructions of the Court and every and all matters and things pertaining to the trial of said case all of which is made a part of the record in this case and all of which is referred to hereby and made a part hereof.

That after the introduction of all the testimony by both the plaintiff and the defendant the following motion and proceedings were had:

"Mr. SENN: Your Honor, at this time I want to make a motion for a directed verdict, on the following grounds:

First, that there is not sufficient testimony or evidence of negligence to be submitted to the jury.

Second, that the evidence shows that this was not a staging or a platform of any permanent nature, and the testimony shows that there were three or four or five planks thrown side by side—so Mr. Moore testified; that they were not spiked nor nailed down; that they were two or three inches apart, and were lying there loose; that the planks were about twelve feet long, and that they were thrown on a log that projected out from the bank; that that testimony, your Honor, does not make out an appliance or a place or sidewalk, or staging, or platform such as this company would be responsible for. That was Mr. Moore's testimony, and was the only testimony in this case as to what was there from his standpoint. Now your Honor, to say that, when you put two or three or four planks side by side—even admitting his testimony for the sake of the argument that that constitutes a staging or platform without being bolted down or spiked down, or nailed, and they were of that form lumber that was lying all around there—that that would constitute a staging, or platform or appliances that was furnished by the employer or the master, it seems to me would be going a long way. Not only that, but if there is any testimony here at all of who did this, it was the work of fellow servants, if anybody put that there, it was some men who simply threw the boards together there, and walked out and for the negligence of the fellow-servant the company would not be responsible.

Third. That it was one of those risks which he assumed, because at the time of the accident, your Honor, they were engaged in cleaning up, breaking down and taking away the debris, and they were cleaning that stuff up; and where men are engaged in cleaning up, and preparing, and breaking down, there is no law as to a provision of a safe place, and certainly there is no rule providing that safe scaffolding shall be used or made, because at that time they are engaged in the very work of tearing that down. And furthermore, the company had provided a float for him to go upon—a safe place, where they have always gone, where he could have gone, and where he is supposed to have gone—and whenever he took any other way, and was injured by his own negligence, the company was not responsible.

COURT: I will overrule the motion.

Mr. SENN: Save an exception."

That after said motion was made and argued, the Court overruled the same. An exception was duly and regularly allowed by the Court.

That afterwards, to-wit, on or about the 25th day of April, 1913, a motion for a new trial was made, which motion is in the following terms, to-wit:

"Comes now the defendant in the above entitled cause and moves the Court for a new trial and for an order setting aside the verdict and judgment in the above entitled cause on the following grounds, to-wit:

First: Excessive damages appearing to have been given under the influence of prejudice and passion.

Second: Error in law occurring at the trial and

excepted to by the party making this motion, and in support of said motion the defendant herein presents the testimony taken at the time of said trial, and the whole thereof, and presents its authorities and brief."

That said motion was duly argued and overruled, to which action of the Court, an exception was duly taken and allowed.

That said bill of exceptions was duly prepared and submitted within the time allowed by the order of the Court, and is now signed, sealed and settled as and for the bill of exceptions in the above entitled cause and the same is hereby ordered to be a part of the record in said action.

In Witness Whereof, I have hereunto set my hand and seal this 4th day of June, 1913.

CHAS. E. WOLVERTON,
Judge.

C. H. WHEELER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. GILTNER:

Please state your name and occupation.

A. C. H. Wheeler; physician and surgeon. At the present time I am Health Officer for the City of Portland.

Q. Doctor, are you duly licensed to practice your profession in the State of Oregon?

A. I am.

Q. How long have you been practising in the

State of Oregon, Doctor?

A. In the State of Oregon about 33 years—maybe a little more, maybe less. I would have to look up records to find the exact date, but it is about that time.

Q. Are you acquainted with the plaintiff, T. H. Moore?

A. Yes, sir.

Q. Were you acquainted with the Union Bridge & Construction Company, the defendant in this case?

A. Yes.

Q. State if you had any business relations with them during the time that they were constructing the piers in the Broadway Bridge.

A. Yes, I was their surgeon to take care of the injured or sick connected with the bridge work or the coffer dam work or the excavating work—in fact, any employe of the Bridge Company.

Q. State if you, on or about the 2nd day of October, 1911, or thereabouts, met the plaintiff, T. H. Moore.

A. Yes.

Q. And state, now, what you found, if you examined him, and what you found, and if you attended him for anything or any injury to his foot.

A. About that date. Of course I do not know the dates at the present time from memory. Presumably that is the date. I first met Mr. Moore at the St. Vincent's Hospital. He was sent out there by my assistant, Dr. Glenn Wheeler, after having examined him in his office. He sent him to the St. Vincent's

Hospital. And I found him with a puncture wound in the sole of the foot, with the foot very much inflamed; blisters and blood upon the top of the foot and on the bottom of the foot and upon the leg, showing the acute septic affection of the wound; and the infection of the wound was the result of the affection.

Q. Doctor, I wish you would state to the jury now what you did to him, and how you attended to his foot, and the condition of the foot up to the time you operated on him.

A. The infection was so acute, so active, that a surgical operation was impossible. It was not impossible, but the results would be disastrous if I had amputated his foot at that time. I put it in what we call a hot bath—that was, I got a large vessel and filled it with water and in that water we had an antiseptic solution, and in this we put his leg and foot, down into it and up to his knee, and then covered the knee with the hot water and kept that hot for long periods of time. I think in this instance at one time he was there constantly for 24 hours without any cessation, in this bath. The idea, of course, was to arrest the septic affection, which seemed to be extending higher. And at that time it looked like a surgical operation would be necessary to save his life, and we would have to amputate the leg here. But I kept persisting with the hot baths and with the result that what we term a line of demarcation set up. That line of demarcation is simply this, that nature begins to amputate on her own account. That is, that portion of the foot would die, and then it would form a marked line here of dead

portion there which would be black, and the rest of the foot would become more healthy above. The infection disappeared from here, and this line of demarcation was formed across the top of his foot; so when that began to form that way then I felt at ease. I should amputate it down here and save him as much foot as possible. The object of this was to save all the limb that you can. In this instance I amputated across here. The portion of his side foot here and the little toe was yet alive and healthy, so I saved that, brought that around and made a flap to save him this portion of the foot, and up through here and down there, so he could walk on the natural extremity of the foot; that is, the portion that was left.

Q. How long was it from the time you first saw him, Doctor, until you had performed the operation?

A. I could not answer that exactly because I have not the dates; but it must have been probably three weeks, fully three weeks, I should say, from the time I first saw him until he got it in such condition that I could amputate down lower. As he was getting better of course I kept trying for more foot, for more space, for more extent. And as it would get better here that would save me, it would get better so I could amputate here. Then it finally got to this point where I could amputate at this point and save him all the leg I possibly could. It must have been three weeks.

Q. You did better than you thought you could under the circumstances, Doctor?

A. Oh, yes; yes, yes, yes.

Q. Now, I will ask you, Doctor, if he suffered any pain.

A. Oh, yes; excruciating pain.

Q. What is that?

A. Excruciating pain. The pain was very severe at the beginning, intensely severe. The man suffered necessarily from the swelling and congestion.

Q. What in your opinion was the cause of this pain and swelling?

A. It was the infection from the wound in the bottom of his foot. That wound apparently was a wound from the nail, a nail wound, a sharp punctured wound. It was a sharp, deep punctured wound.

Q. Is that what you call blood poisoning?

A. Yes, that is what we term blood poison—septic, really it is septic infection localized to the leg. Blood poisoning generally is understood to mean a general infection of the whole system. In this instance it was—while the system sympathized with the amount of the infection here, the infection was localized to this one limb. The other portions of his body, of course, were exempt from any affection other than the general toxic infection from this condition. It was not so very great.

Q. How long did you treat him after that, Doctor?

A. Well, he was under my observation as long as he was in the hospital. I would see him—of course, while he was in this condition I had to see him every day, sometimes twice a day.

Q. After he came out from the hospital, then you looked after him?

A. No. After he came out from the hospital I have not had anything to do with his foot since then. And while he was in the hospital after the foot began to get well, then I didn't see him so often, every two or three days, you know. It was not necessary—the nurses could take care of it. I would look at it occasionally as often as I thought it was necessary; or if they thought it was necessary they would call my attention to it. But that lasted over a long period of time. Now that time—of course I don't know the length of time without consulting the hospital records.

Q. What would be the reasonable value of your services in a case of that kind, Doctor?

Mr. SENN: There is no claim here made for doctor's services.

Mr. GILTNER: Isn't there a claim made in there for doctors?

A. No, I think not.

Mr. GILTNER: No, that is right.

Cross Examination.

Questions by Mr. SENN:

He stayed in the hospital a good while longer than was necessary, didn't he, Doctor?

Mr. GILTNER: I object to that. Oh, excuse me.

A. Well, he remained in the hospital longer than was necessary so far as the treatment was concerned. So far as the treatment of the leg was concerned.

Q. You saved the heel of the foot, if I understand you correctly?

A. Yes.

Q. It was cut through the instep?

A. Yes, about through the instep here.

Q. Then he has a good part of the foot left?

A. He has this portion from here of the foot.

Q. Is that a good serviceable portion?

A. It is a serviceable portion, but not a good serviceable portion.

Q. Not as good as the whole, of course not. They have artificial shoes now that they place on there, on an injury of that kind, Doctor?

A. I am afraid that I did not leave him a foot that an artificial shoe could be fitted to. I am afraid that would be impossible on account of the attachment. My conception of that was that he could have a steel shank put in here the whole length of the shoe from the heel down here and extend down on the sole, and give him spring from that in lieu of the spring that I have taken off by amputating this portion of his foot. But I don't think he ever followed that out. And I don't know whether it would be successful or not. And I don't believe you can put an artificial foot on there. Where we have an artificial foot we amputate here. And I thought of amputating there, and let him then put on an artificial foot. But I desired to save as much leg as possible, was my reason, figuring he could walk better on this stump than on an artificial leg.

Q. After the accident did he make any statement to you as to how it happened?

Mr. GILTNER: I object to that, if the Court

please; not proper cross examination.

COURT: That is not cross examination.

Mr. SENN: Well, then, we will recall him when our case comes. That is all, Doctor.

Excused.

T. H. MOORE, called as a witness in his own behalf, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. GILTNER:

Please state your name, age, residence and occupation.

A. T. H. Moore; age, 46; living in Portland; occupation, laborer.

Q. Are you the plaintiff in this action?

A. Yes, sir.

Q. State the condition of your health on and before the 2nd day of October, 1911.

A. My health was good.

Q. Whom were you working for?

A. Working for the Union Bridge & Construction Company.

Q. The defendant in this action?

A. Yes, sir.

Q. How much were you being paid a day?

A. I was getting \$3.00 a day.

Q. Were you having steady employment?

A. Yes, sir.

Q. I wish you would state, now, under whom you were working. Who was the superintendent over you?

A. Mr. Dawson was superintendent at the time.

Q. State if on or about that time you received any instructions from Mr. Dawson.

A. I did.

Q. State what they were.

A. Mr. Dawson instructed me to go over on the East pier with Mr. Chalfan.

Q. Who was Mr. Chalfan?

A. Mr. Chalfan was acting as foreman for the Union Bridge Company. He instructed me to go over to Mr. Chalfan on the East pier and help get those pipes out, which I did.

Q. What position did Mr. Chalfan have over you?

A. He was a foreman, acting as foreman over me.

Q. Did you take orders from him?

A. Yes, sir.

Q. Where were you when you received this instruction?

A. I was right on the front part of the Albers Bros. docks, close to their office.

Q. How did you get over there? How did you get over to the pier?

A. From the office to the pier, we went over in a boat. They took us over in a boat. We was on the West side.

Q. I wish you would state if you ever had worked on this pier before this time.

A. No, sir.

Q. I wish you would look at this model here and state who made that.

A. I made that model, and made it as near to rep-

resent the East pier of the Broadway Bridge as I possibly could. We were sent over there to take those pipes out. Those pipes, joints, probably 8 or 10 feet long, they joint together, are bolted together, and this here coffer dam was filled more than level full with gravel. And we were shovelling this gravel away and getting down to where these pipes were jointed so as to get the taps and bolts out to take off this top joint. While we were working there that way shovelling up gravel out of there, some little water gathered in around the pipes. I was up here shovelling gravel back. Mr. Wylie was up here.

Q. Wylie who?

A. Mr. Chalfan, the foreman.

COURT: Is the name Chalfan?

A. Yes, sir. I was standing here shovelling back. He says, "Tom, go across there and get some of those plank on the bank of the river and bring here and lay across here, and you won't need to get down in the water. You can reach down through and take the tap off and take the bolts off without getting into the water so much." I went across here and got the plank and brought it back, and he showed me where to lay it right across that way. I started back to get the second plank and stepped off this coffer dam on this staging. I stepped on a wire nail, sharp wire nail. It penetrated through my shoe and into my foot. And I pulled my foot off that nail and turned it up this way to see if there was any blood came out, as it was hurting me, and my foot was, my shoe was covered with concrete. These boards had been used

in the concrete form and had lots of concrete on.

Q. What was the color of the boards?

A. They was a light gray, such as concrete would make a board.

Q. What was the color of the nail?

A. Well, the nail would be about the same color. As I pulled my foot off the nail and stepped back on the coffer dam, I went right across it here and told Mr. Wylie—

Q. Mr. Wylie?

A. Mr. Chalfan.

Q. Call him by his last name.

A. All right. Mr. Chalfan was right here. I told him I had run a nail in my foot. He says, "Very bad?" I says, "Very bad, the way it hurts me." He says, "You better come up and go over to the office, and have something done for it." Right here I got into the boat and went across on the West side to the Albers docks, and we got out of the boat there and went up on to the docks.

Q. Now, before you go any further, I desire to question you in regard to this model. I wish you would state the length of this coffer dam.

A. Well, the length of the coffer dam I could not tell you the exact length of it. It is between 60 and 70 feet, the length of it this way. This way was something like 30 feet across this way.

Q. 30 feet wide?

A. No, 15 feet wide across this way, and something like 60 feet this way. About 15 feet across this way, I presume. I have not got the exact—

Q. Now, I wish you would state what those nails represent that are in the model of the coffer dam.

A. Those nails represents pipes that runs down through the pier down to the bottom in order to take out sticks, stones or anything that they could not blow out by the compressed air. With a bucket they brought it up through those pipes and we emptied it outside.

Q. Now, I wish you would state about what was the diameter of those pipes.

A. Well, I presume about 16 inches in diameter.

Q. What was the condition of the piers at the time that you went over there, as to having any cement forms on them or not?

A. Those were all stripped down. This was the lumber that was piled over here, had been the forms of those corner piers that came up here.

Q. About how high were these piers?

A. Well, something like 18 feet, 18 or 20 feet. I don't know the exact height of them.

Q. State whether they were the same size all the way up.

A. No, sir. They were a little bit smaller at the top. They were larger at the bottom and ran kind of sloping towards the top.

Q. Now, what composed this coffer-dam that we speak of here. Tell what composed that.

A. That coffer-dam was made out of timber 12x12 placed right flat on one another and spiked together with drift pins—holes bored through and drifted together.

Q. I wish you would state if there was a float around there and where that float was located, and how it was connected, if at all, up to this coffer dam or this pier.

A. There was a float at the north end of the pier. It was used for men going from the East to the West side and the West to the East side in a boat, to get off here and go up to the railroad, where we would go either way if we had work, North and South, both ways. This float was used for getting off—the men who were going off work and coming to work get in the boat and get out of the boat here and go up to the railroad. It was not connected with this pier at all whatever. It was at least from 4 to 6 feet from the North end of the pier.

Q. What was the distance from the East plank of the coffer-dam to the bank of the river?

A. Well, something like between 5 and 7 feet. I would not say exactly because I didn't measure it. It was something near 5 or 7 feet between the coffer-dam here and the bank, to the bank.

Q. State, now, how this staging was built.

A. Well, the staging was, the North end was braced on a piece of timber, with this lumber back here laid on the back end of it. I could not say whether it was projecting out of the bank or not; but I know there was a piece of timber under there, and at the south end there was some gravel in there and some stones filled in that those boards was placed on. There might have been a board underneath the staging on top of those stones—I could not say as to that.

I did not see that.

Q. State how far below the top of the coffer dam the staging was.

A. Something like about 8 or 10 inches.

Q. Then in stepping from the coffer-dam on to the staging you had to step down about 8 or 10 inches?

A. Yes, sir, something just like a step. You step right down on to the staging.

COURT: Do I understand the staging ran square up to the coffer-dam?

A. Not up against it.

COURT: What was the space between?

A. Well, something like a foot—a foot and a half.

Q. Now, what was the stage of the water there at that time?

A. The water was very low at that time. It was very low water at that time.

Q. How near did it come to the top of the top part of the frame of the coffer-dam on the West side of the coffer-dam where you got into the boat?

A. Well, about 8 inches, I presume, to the top of the coffer-dam.

Q. What was the size of these boards that composed the coffer-dam which ran lengthways, lengthways of the coffer-dam?

A. Which boards do you mean?

Q. Well, these boards up here. Can you see or not? I mean these boards that composed the sides of the coffer-dam here, running North and South.

A. Well, this was 12x12 stuff. 12x12. These

were all—the coffer-dam was all made of 12x12 timber, up until it came here, and from here on up it was made of 2 inch stuff, 2x8 or 2x6.

Q. State whether there was any flat, any boat or scow on the West side of the coffer-dam at that time.

A. There was not that morning when I was there.

Q. Now, I wish you would state about how far from the edge of the river, the water, it was to where these cement planks were piled up on the bank of the river.

A. Well, from the edge of the staging to the bank of the river to where the plank was piled was not over a foot and a half or two feet from the bank of the river.

Q. Now, Mr. Moore, I wish you would tell the jury or give them an idea as to how the bank from the railroad track sloped down to the bank of the river, to the water's edge.

A. Well, the bank along there is quite steep. It ran down quite steep. Of course it was not as smooth as this is. It was quite steep, ran down here, and there was a little offset here right down next to the water, probably a foot and a half or two feet—ran kind of back that way. It was quite steep. A man could not walk up that bank. It was so steep he could not walk up it. Of course he might crawl along the side. To go straight up it was so steep a man could not walk up.

Q. That is the reason, I suppose, those steps were made here?

A. Yes, sir. That is the reason those steps were

put there.

Q. Now, state in going—when Mr. Calfan ordered you to go after those boards—where you went.

A. I went across this staging to this board pile right here.

Q. When you stepped off the staging were there any loose boards in front of you?

A. Not between me and the pile of boards, no, sir.

COURT: Were the boards piled on the staging or on the bank?

A. Piled right on the edge of the bank, right on the edge of the bank.

Q. Were there any loose boards there?

A. No, sir.

Mr. GILTNER: If the Court please, I would like to introduce this in evidence.

COURT: Any objection, Mr. Senn?

Mr. SENN: We have no objection for purposes of illustration.

Marked "Plaintiff's Exhibit A."

Q. About what was the depth of the water between the coffer-dam and the East form that made the coffer-dam and the bank of the river? About what was the depth of water there underneath this staging, about?

A. Well, that varied. It was not very deep; it had been filled up in places so that it probably was not over a foot deep in places; some places two feet deep, but it was not deep at any place on the East side of the pier at that time. The water was low and there was no deep water on the East side of the pier.

Q. Was there any other way or any means of going from this coffer-dam on to the bank of the river at that time?

A. No, sir.

Q. Where were the men working that went over with you?

A. They were shoveling gravel out from around the pipe.

Q. Were any of them on the bank of the river?

A. I think not; not that I remember of.

Q. Were they removing any cement forms at that time from any part of the coffer-dam or from these piers?

A. No, sir.

Q. Was anybody working on the pier itself, the cement pier that went up?

A. There was one man working up there, a finisher, a concrete finisher. He was working there that morning.

Q. Now, Mr. Moore, I wish you would state to the jury what transpired after you got in the boat and went to the office. Don't state what anybody said, because you cannot state that; but what took place.

A. After I got in the boat and went to the office?

Q. Yes.

A. Why, I got in the boat and went over on the West side of the river, and I got out of the boat and went up through the docks to the office. The office was in the front part of the docks. But before I got quite to the office, Mr. Alexander and Mr. Mordaunt came out of the office.

Q. Mr. Alexander and who?

A. Mr. Mordaunt.

Q. Is this the gentleman here?

A. That is Mr. Alexander. And I was limping up through there, walking lame. I suppose they asked me what was the matter. I told them I had run a nail in my foot.

Objected to.

Q. Who was Mr. Alexander?

A. Mr. Alexander was one of the office men. I don't know what part he performed in the office, but he was one of the office men.

Q. Well, you don't need to state what was said. He objects to that. State what took place, what was done there.

A. Well, they asked me what was the matter, and I told them I had run a nail in my foot, and they says, Mordaunt says, "Sit down and take off your shoe," and he says, "I have got some turpentine here in the office. We will put some turpentine on it. That will be good for it." He turned around to go in the office to get the turpentine, and I sat down on a piece of timber there and took my shoe off. He came out, and as he was putting some turpentine on to it he, Mr. Dawson, the superintendent, came in the front door of the docks. And he says, "Tom what is the matter?" And I says, "I stepped on a nail over on the staging over there."

Mr. SENN: Your Honor, we object to that conversation.

Mr. GILTNER: Mr. Dawson was superintend-

ent—virtually it is the corporation.

COURT: What he would tell the superintendent is not any better than what he would tell the jury.

Q. Don't state what Mr. Dawson said; but what did you do?

A. Well, I went to Dr. Wheeler's office. I went in Dr. Wheeler's office, and I met a young lady, and I asked her if Dr. Wheeler was in, and she says he was not in at the time, but would be in in a few minutes. I sat down there a few minutes, and she went out and came in and she says, "Come over in the other office, Dr. Wheeler is in." I went over in another office, and I met young Dr. Wheeler and he asked me what was the trouble. I told him I had run a nail in my foot. And he examined it and got a tub of hot water and put some medicine into it and told me to put my foot into that. I held my foot into that for probably an hour, and it was paining me and hurting me so that I could not stand it, and I told him that I could not stand it there; and he says, "It is the best I can do, unless you can put into the wash stand or wash bowl," that they have in the corner of the room. And I told him I could do anything that would stop the pain. It was paining me so that I could not stand it. And I got up and put my foot into that, and I sat there for probably half an hour or more. And then he told me to go down to my room, that he would be down just in a few minutes. I went down to my room, and it was not but a few minutes until he came down. He looked at my foot and says, "You will have to go to the hospital." I says, "It does not make any differ-

ence where I have to go. I would like to get that pain stopped, because I certainly can't stand it long, the way it is hurting me." And he sent me to the hospital. They took care of it up there that night, put on hot dressings. The next morning old Dr. Wheeler came and examined it.

Q. The gentleman that testified here?

A. Yes, sir. And he told me that I would have to get up. I was in bed. He told me I would have to get up and put my foot in a tub of hot water, which I did.

COURT: Is it necessary to go over that again? Dr. Wheeler explained that.

Mr. GILTNER: I would like to have the jury—there is some little details.

COURT: He can testify about the pain and suffering, but to go through that in detail—

Mr. GILTNER: The Doctor did not state how long and what he did, and the minutiae about it. He remembers that more.

A. Well, I sat with my foot in hot water almost continuously day and night for three weeks. The swelling had got clean above my knee. They held a consultation among six or seven doctors, and was going to take my leg off above the knee. I told them, no, I didn't want them to do that. So we kept keeping it in hot water till I finally got it drawn down, right down, and settled in the front part of my foot, and formed a line across there, and the front part of my foot turned black. And so I persisted in waiting a day or two longer if I could draw more of it out. And Dr. Wheeler says, "Well, that is taking great

chances. If that poison should ever circulate back through your blood or go back into your system it would kill you." "Well," I says, "We will wait a day or two anyhow, and I will try to draw some more of it out." And I think we waited two days. I kept it in hot water, and the front part of my foot had begun to decay. My toe nails had fallen off. My toes had begun to decay, all except the little toe. The little toe stayed alive. So I gave my consent then to take it off. He took the little toe, it was alive, out, and peeled that back, as he told me later on. Of course I didn't know then, and took my foot off then, and then wrapped this skin right around here, and sewed across there, which leaves a very tender place. It is **very tender in** here yet. And it is taken off so far back—I have got considerable dressing on there now. But it is taken off more than straight back. It is in that kind of form. It don't benefit me much to walk on. After the amputation, he ordered me to put that foot in hot water. I put that foot in hot water—raw stub—right in a tub of hot water for four hours each day for a week after the amputation. I suffered from the loss of sleep, and from the suffering and the pain from that blood poisoning, from that foot, caused my hair to turn gray, turn white. And it was for four months that I suffered very severely. After it began to heal and get better, why of course I did not suffer so much. And I was there a year and three months, and there was times that it would heal up and look as though it was getting all right, and then it would break open again; probably it would take a week or so to heal it

up again. Kept on that way for quite a while. Finally it healed up, and was all healed up now. But it is very tender, very sore yet. I can't stand to walk on it to any extent. Of course I can walk around a little on it. It bothers me considerable.

Q. State, Mr. Moore, what effect it had on you; whether you could use it in performing your duties, your labor, whether you are able to.

A. Well, I was a carpenter by trade. I have worked at the trade considerable; and any man would know how much it would hinder a man from doing that kind of work. I don't think a man would be able to do scarcely any of that kind of work.

Q. How long did you stay in the hospital, did you remain in the hospital, and were compelled to stay in the hospital on account of that foot?

A. Well, I was there a year and three months, 15 months all told. Probably I could have went out a month or three or four weeks earlier than I did. But I was not able to do anything, was not able to support myself. I was not able to do anything or work of any kind on the foot.

Q. Are you able to do any work now?

A. I have not been, no, sir.

Q. State what effect, if any, it has upon your foot when you walk; if you notice any effect on it in the evening or walking.

A. Oh, if I walk to any extent, if I walk any amount during the day it gets very sore. It gets very sore, it hurts me in the evening.

Q. Does it swell any?

A. It swells some after walking on it.

Cross Examination.

Questions by Mr. SENN:

How long had you worked for the Union Bridge Company, Mr. Moore?

A. Between six and seven months.

Q. On the Broadway Bridge down there, on the various places?

A. Yes, sir.

Q. What kind of work were you doing? Common labor work?

A. Common labor work, yes, sir.

Q. And prior to that time, what kind of work did you do?

A. I worked on the Balfour-Guthrie's mill building—the Balfour-Guthrie's mill.

Q. Now, this little staging that you speak of, how long were these pieces here, referring to the stages?

A. Well, they vary. Those planks were from—I would say from 12 to 14 feet long; from 10 to 14 feet.

Q. And how many were side by side?

A. Well, four or five—I don't know. I didn't count them particularly.

Q. Were they spiked down?

A. No, sir, they was not.

Q. They were laid there?

A. They were just throwed down there for the purpose of using them.

Q. Just laid down there loose?

A. Temporary staging—that is all it was for.

Q. They were not fastened on either end, so far as you know?

A. No, sir. No, sir, they was not.

Q. They had just been laid down there, and they had just come off these forms?

A. They had been taken off. I don't know when they was taken off those forms.

Q. Now, you say that between the coffer-dam and the bank there were some places in there where it was practically ground all the way, wasn't it?

A. No, sir, there wasn't ground—water.

Q. Do you say there was water in all the places?

A. Water all through the coffer-dam.

Q. You say there were some dredgings had been thrown up here in between the coffer-dam, and gravel that came out of here and was thrown in here?

A. I didn't say there was any taken out of these and thrown in here, no, sir.

Q. Was there any in there?

A. There was ground in further than in other places, like the bank of the river, it varied along.

Q. You spoke of a log coming out here. Did it come clear from the bank to the coffer-dam?

A. No, sir, it didn't reach to the coffer-dam by a foot and a half, such a matter.

Q. Those planks were thrown on this log?

A. Yes, the north end of those plank lay on that timber.

Q. And this staging was about how far from the coffer-dam?

A. I presume about a foot and a half.

Q. And how far was it from the bank of the river on the other side?

A. Well, the water was very shallow there at the bank—it was probably two feet.

Q. Then you would step from the coffer-dam on to these loose planks that were thrown across the log?

A. Yes, sir.

Q. And walk across four or five, you say?

A. Yes, sir.

Q. And then you would step a distance of two feet onto the bank?

A. It would probably be two feet. I don't know exactly.

Q. There would be water between the staging and the bank a little.

A. The plank were not erected close together or anything. They were probably two or three inches apart—something like that. They wasn't placed up close together.

Q. Were they in perfect line or scattered around?

A. Oh, yes, they was in perfect line.

Q. But they were not spiked down, or nailed down, or anything of that kind?

A. No, sir, they wasn't spiked down.

Q. You don't know how they got there?

A. No, sir.

Q. Now, the staging was built along sideways?

A. Yes, sir.

Q. As is shown here?

A. Yes, sir.

Q. It was not thrown from the coffer-dam to the

bank?

A. No, sir; because those plank was from 12 to 14 foot long. That bank was so close here that to lay plank this way they would run away over on the coffer-dam here.

Q. You said there was a pile of lumber on the bank here?

A. Yes, sir.

Q. How many? How much of a pile was that?

A. Oh, quite a pile. I don't know how much. There was quite a pile of it there.

Q. Piled on the side of the bank?

A. Piled against the bank, yes, sir.

Q. It was piled from the bottom up?

A. Yes, sir.

Q. How many sticks do you suppose there were there? 100 or 200?

A. Yes, I suppose there were a hundred or a hundred and fifty.

Q. And they were piled up alongside the bank?

A. They was piled right up from the bank, yes, sir.

Q. Now, these planks were of various lengths, were they not?

A. Yes, sir, I think they was.

Q. They would run from what length?

A. Well, I don't know. There may have been some as low as ten feet; but I will say from 12 to 14 feet; probably some 16.

Q. It depends on where they would come off here?

A. Yes. They run sloping up towards the top.

The plank would be shorter up there a good deal than it would be at the bottom.

Q. After you got the nail in your foot, didn't you go over here on the bank?

A. No, sir.

Q. And sit down and take your shoe off?

A. No, sir.

Q. You are sure that you stepped right over here onto the coffer-dam and took a boat?

A. Right back over here to where Mr. Chalfan was, and took a boat from there to the West side.

Q. Isn't it a fact, Mr. Moore, that you sat down on the bank here, and took your shoe off there?

A. No, sir.

Q. You never went on the bank at all?

A. No, sir; not after I run the nail in my foot, I didn't.

Q. Did you have—you didn't have a plank at that time?

A. No, sir.

Q. And the first time you took your shoe off was over at the office?

A. Was over on the docks.

Q. That is across the river, on the West side?

A. Across the river on the West side, yes, sir.

Q. And after you ran the nail in it you never went on the bank at all?

A. No, sir.

Examination by the Court.

Q. Do you know when that staging was built?

A. No, sir.

Q. Do you know what it was built for?

A. It was built to carry that lumber from the confeder-dam to the bank.

Q. You don't know who built it?

A. No, sir.

Mr. GILTNER: Mr. Piltz testified to that.

Mr. SENN: No, he didn't testify to it.

Mr. GILTNER: I think he did.

Cross-examination continued.

Q. Now, you say these planks here, there were about four or five—how wide were they?

A. Well, they were 2x6 or 2x8. I wouldn't say positively which.

Q. 2x6 and 2x8?

A. 2x6 or 2x8.

Q. That is, they were six or eight inches wide?

A. Inches wide, yes, sir.

Q. And they were just laid side by side?

A. Yes, sir.

Q. Loose on these poles?

A. Yes, sir.

Q. This is the first time you had ever been there, was it not?

A. The first time I had ever worked down there, yes.

Q. You don't know what that was built for, do you? You didn't see it built?

A. I didn't see it built, but it couldn't be used for anything else.

Q. You just saw the boards lying loose there, one end on the log?

A. It was put in there as a staging to go from the pier to the bank.

Q. Now, Mr. Moore, wasn't it a fact that there was a float on the north end, where the men would walk back and forth?

A. There was a float at the north end, but not connected with this pier. Nor you couldn't get from this float to this pier without making a staging from the pier to the float.

Q. Well, now, wasn't it right up against the pier, and the men would walk right off the float onto the coffer-dam?

A. No, sir, it was not.

Q. What was the float anchored to?

A. It was anchored to the bank of the river. I don't know what it was anchored to, but one end of it was tied to the bank of the river.

Q. One end was on the bank?

A. Yes.

Q. And wasn't the other side up against it?

A. The other end floated out on the river loose.

Q. Floated out loose?

A. Yes, sir.

Q. Did you have to go across a plank to get onto the float?

A. If you got onto the float at all you would have to. You couldn't get onto the float as it was.

Q. This float would take a couple of feet of water, wouldn't it?

A. How is that?

Q. This float would take a couple of feet of water

to float it?

A. Yes.

Q. And it would be from the bank probably three or four feet, wouldn't it?

A. No. The end of it was right up against the bank, right at the foot of the stairs; right to the foot of the steps. The end of it was connected right with the steps, and projected out into the river.

Q. How wide was this float?

A. Something like three—three and a half feet wide.

Q. Now, you say that at this time you were going to take some pipes out?

A. Yes, sir.

Q. Were these pipes buried in the sand and gravel?

A. They were covered up where they were jointed. They wasn't buried. They stuck up through.

Q. How heavy were they?

A. Oh, they were pretty heavy. I don't know how heavy they were.

Q. Very heavy pipes, were they not?

A. Quite heavy pipes, yes, sir.

Q. And you would take them out with a derrick, wouldn't you?

A. Well, we hadn't taken any out when I left there. When I got hurt we hadn't taken any out.

Q. You were loosening them, and that is what you were sent over there for?

A. We were shoveling gravel over. We hadn't loosened any. We hadn't taken a tap nor a bolt out

at the time I got hurt. We hadn't got down to them yet. Hadn't got it cleaned away.

Q. But your intention was, after you had them loosened, to hook on with a derrick and hoist them out?

A. I didn't know whether they intended to hoist them onto a derrick or throw them down on the coffer-dam. There was plenty of room for them. There was no derrick there at that time.

Q. Wasn't there a scow back of the pier, out into the river?

A. No, sir.

Q. Well, now, Mr. Moore, you said that after you stepped on the nail on the staging you stepped back onto this coffer-dam?

A. Yes, sir.

Q. And you didn't go to the bank?

A. No, sir, I didn't.

Q. Well, you stepped from the coffer-dam onto the float then, didn't you?

A. No, sir.

Q. Well, how did you get onto the float?

A. I wasn't onto the float.

Q. Did you take the boat from the coffer-dam?

A. I did.

Q. Or from the float?

A. From the coffer-dam.

Q. Where was the boat at that time? Wasn't it attached right to the float?

A. No, sir, it wasn't attached to the float; nor I don't know just where the boat was at that time.

Q. Isn't it a fact that they always had the little skiff or boat attached right alongside the float, and the men would step from the coffer-dam onto the float, and into the boat?

A. No, sir, not always.

Mr. GILTNER: I would like to ask him one question, so as to get it clear. How long had you worked there before the accident happened?

A. I presume about an hour and a half; near that time.

Q. Now, how wide was this little—these loose boards that were lying on this log, altogether?

A. Well, something like three and a half feet—three feet, or something like that. I don't know.

Q. You say there were four or five of them, and they varied from six to eight inches wide?

A. Probably they were eight-inch stuff, or six-inch stuff—I don't know which. But they were not laying close together. There was probably two or three inches space between them.

Q. And from this plank to the river was about two feet, to the edge of the river?

A. Something like that. It wasn't—I don't know exactly—probably a foot and a half or two feet.

Q. And you say all this lumber that was piled there on the bank, to the number of about 100 to 150 pieces?

A. Something like that, yes, sir.

Excused.

Adjourned until Monday morning at 10 o'clock.

April 14, 1913. 10 a. m.

T. H. MOORE resumes the stand.

Direct Examination Continued.

Mr. GILTNER: If the Court please, on Saturday when counsel concluded his cross examination of this witness I intended to ask the Court for leave to ask him one question on direct examination which I overlooked. And that was in regard to the shoe and the condition of his shoe, that I overlooked in the direct examination; what became of that shoe?

COURT: Very well, you may ask the question.

Mr. SENN: We are making no claim about the shoe, your honor.

Mr. GILTNER: I want the jury to know about it; I am asking—

COURT: Very well.

Mr. SENN: No objection.

Q. Mr. Moore, will you please state to the jury what kind of shoes you wore on the day on which this accident happened; you ran the nail through the shoe?

A. I had a reasonably good pair of working shoes on that I wore probably four or five weeks.

Q. How thick were the soles?

A. Well, good ordinary soles—good as there is on an ordinary working shoe.

Q. And the nail that projected through the plank projected through about what distance?

A. About an inch and a half.

Q. What became of that shoe, those shoes?

A. After I was sent to the hospital and had my foot amputated, my partner that was rooming with me put my shoes on and wore them out.

Q. What was his name?

A. H. R. Miller.

Mr. GILTNER: That is all.

Plaintiff rests.

THOMAS HUGHES HOLMES, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. SENN:

Where do you live, Mr. Holmes?

A. My residence in Portland, do you mean?

Q. Yes.

A. 369 Williams Avenue.

Q. And how long have you lived in Portland?

A. I first resided there in June of 1911.

Q. What is your business?

A. Civil engineer.

Q. And how long have you been engaged in that business?

A. 8 years.

Q. And at what points?

A. Different points throughout the United States.

Q. And on what bridges?

A. Well, various bridges; quite a long list of them if I name them.

Q. Just mention a few.

A. Well, the Thebes bridge, that is at Thebes, Illinois, across the Mississippi River; Red River bridge in Arkansas, and Trinity River bridge in Texas, and Hawthorn bridge, Chicago.

Q. Are you a graduate of any school?

A. No, I am not a graduate.

Q. Whom were you associated with on the Broadway Bridge?

A. Ralph Modjeski.

Q. Who is Ralph Modjeski?

A. He is a consulting civil engineer of Chicago; bridge builder.

Q. Is he the man who designed this bridge?

A. He is.

Q. In whose employ are you?

A. Ralph Modjeski's.

Q. But in whose employ is Ralph Modjeski?

A. He was employed as consulting engineer by the City of Portland.

Q. In building the Broadway bridge?

A. In building the Broadway Bridge.

Q. What are your duties on this bridge?

A. Well, they are various—the inspection of materials and workmanship, and giving of all lines and grades for the construction of the bridge, and practically seeing that the bridge is built according to plans and specifications.

Q. You then have practically the active supervision of the building, haven't you?

A. I have.

Q. Mr. Modjeski, I understand, is in Chicago?

A. Yes.

Q. Were you working on this bridge on the 2nd day of October, 1911?

A. I was.

Q. How many piers were in process of construction at that time, do you know?

A. To the best of my knowledge, I believe piers 2 and 3, and piers 5, 6 and 7.

COURT: How were they numbered, from which side of the river?

A. Beginning on the West side, they were numbered from one to seven.

Q. Did you make any drawing, Mr. Holmes, as to pier 7, the place where Mr. Moore was injured, as to the shore line and the height of the water, on or about October 2, 1911?

A. I did.

Q. I will ask you to look at this drawing and state whether this is the drawing you made.

A. That is the drawing I made, yes, sir.

Q. I wish you would just step before the jury. Is this an accurate drawing of the conditions at that time?

A. That is accurate, yes.

Q. I wish you would step before the jury, Mr. Holmes, and explain.

A. The drawing was made—

Mr. GILTNER: Just a moment. I would like to ask him some questions.

COURT: Very well.

Cross Examination.

Q. When did you make this?

A. This drawing was made about a week ago.

Q. What did you make it from?

A. Made it from records which we have in our

office, and water records which I got from the Government Station here in Portland to verify my own records.

Q. Who made the original records?

A. The original records were kept—

Q. Who made the original record?

A. I don't understand just what you mean. The original—

Q. Who made the original record from which you took this?

A. It was made by Mr. Weidemann, myself and various other men employed in the construction of the bridge in the engineering department.

Q. What part of it did you make?

A. The records of sinking, the height of the water at that time, various records; the condition of the work as it progressed.

Direct Examination Continued.

Q. Now, Mr. Holmes, probably if you could stand and face the jury, so these gentlemen down here could see it—

A. The drawing was made in three different views to show more plainly the conditions all the way along the pier.

Q. Now, referring to this line, which I will mark with "A"—what does that represent?

A. That represents the shore line of the stage of the water that it was on October 2, 1911.

Q. And the letters "B" and "C"—what do those represent?

A. The intersections of the center line of the

bridge and the—or rather the center line of braces and the center line of piers, which would be the center line of pedestals on which the bridge was supported.

Q. And the letter “D”—what does it represent?

A. That represents the center line of bridge?

Q. That is the coffer-dam?

A. Yes, which is also the center line of the coffer-dam.

Q. And the letter “E”—what does that represent?

A. That is the float, which was used at that time as a landing.

Q. Now, Mr. Holmes, I want you to explain the distances, and the manner of the construction and everything to the jury so that they will understand it; and probably if you could step there—

A. This plan shows a view of the caisson or coffer-dam as some people call it, and the concrete pedestals, looking down from the point directly over it.

Q. Now, what is the distance along here? How long is this?

A. The coffer-dam is 68 feet in that direction, that is North and South.

Q. That is, the line marked “D” is 68 feet?

A. Yes, sir. The coffer-dam is 20 feet in the other direction.

Q. 20 feet that way. I will mark that with an “F.” That is 20 feet?

A. That is 20 feet.

Q. So the coffer dam is 68 by 20 feet?

A. 68 by 20 feet.

Q. Is that the casing that incloses the 2 piers?

A. Yes. That is outside measurements of the foundation.

Q. Now, what are the dimensions of these piers "B" and "C"?

A. Those are—those pedestals are 14 feet and 9 inches, about.

Q. Square?

A. At the base. Yes, sir, they are square.

Q. And do they taper a trifle?

A. There is batter to them. They taper, yes, sir.

Q. Now, this space in here, on October 2nd, which I will mark with a "G"—what was that on that day, according to the Government records and your records?

A. That is all land, dry land in there.

Q. Was this dry land in here?

A. It was also dry land, extending over the top of the caisson.

Q. What is this here that you have marked as a float? What was the purpose of that float, and where was it located?

A. It was located at the extreme North end of the caisson or coffer-dam and was used as a landing for boats, etc., and also used by the engineering department for setting a ladder on there to get to the top of the piers. It may have had various other uses.

Q. What is the fact as to whether or not this float was against this coffer-dam?

A. Well, the float was anchored against the coffer-dam. That is, it was tied to it; otherwise, the

river flows North here, it would swing the float around, especially when the tide was going out.

Q. It would take the float down this way?

A. Yes, sir.

Q. Was it up plumb against the coffer-dam?

A. Up against the coffer-dam, yes, sir.

Q. What is this little mark "H?"

A. That is a view of the ladder looking down on top of it. That is looking straight down.

Q. Where did that ladder go to?

A. The ladder extended from the float to the top of the permanent work—to the top of the pedestal.

Q. That is, if you wanted to get to the top of the pedestal you would go out here on the float and take the ladder up?

A. That is correct.

Q. How high is this pedestal?

A. About 25 to 30 feet above the water at that time.

Q. There has been something else put on since then?

A. Yes, sir; there has been steel cylinders filled with concrete extending the pedestal on up to the present top of it.

Q. Now, when you made up this shore line on October 2, 1911, from what records did you make it?

A. My records kept daily as to the condition of the work, that was kept here, our office elevations, etc., show practically what the shore line would be at that time.

Q. How often would you go to those piers?

A. Probably five or six times a day, depending on the work we were heaviest engaged on.

Q. Was it your duty to be from one pier to the other all the time?

A. It was.

Q. Did you ever see any staging or scaffolding from the shore line here in the center of these two piers to the bank?

A. I never did.

Q. In getting on to the coffer dam, how would you get on to it?

A. There were possibly two ways. The most convenient would be to walk down the stairway and across on the planks shown there and the float, and step from there on the coffer dam. It was right up against it.

Q. Was this stairway that ran up to the bank up the East side?

A. It was.

Q. You would walk on to the float and then step on and walk around?

A. Yes, sir.

Q. There has been some testimony here, Mr. Holmes, about a log, an old log, that projected out from the bank. Do you remember of an old log being there from the bank?

A. Well, at that point there are—the bank is held in place by numerous logs extending into it endways, other logs lengthways of the bank, to hold the position of the bank, the slope being too steep to permit of it staying up of itself.

Q. Did there any log run out toward the coffer-dam?

A. Yes, there were logs ran out toward the coffer-dam.

Q. Where was this log?

A. There were logs at this point that extended nearest the coffer-dam, the point here, about, I should say, 8 feet from the South end of the coffer-dam.

Q. We will mark that with figure "J". That was about 8 feet from the corner?

A. To the best of my recollection it was.

Q. Now, how far from the coffer-dam did that come?

A. That came within about 6 or 8 feet of the coffer-dam, possibly 10.

Q. And it ran into the side of the bank?

A. Ran into the bank.

Q. Now, assuming that the space marked with "G" was all dry land on that day, was there anything to prevent a person from walking from the coffer-dam over the dry land on to the bank?

A. Absolutely nothing.

Q. This space marked by "J" and the space just North of the float—there was water in there?

A. Water there.

Q. But this space in here was dry land?

A. Dry land.

Q. Referring to the view—we will call that view 1—referring to view 2, what does that represent?

A. That is an elevation, a side elevation, a side view, showing the elevation of the concrete pedes-

tals. That would be the same view as a person standing on the East bank and looking West, directly West at the pedestal—

Q. You have a place marked here with a ladder—what was that ladder?

A. That ladder was used by—mostly by the engineering force when getting to the top and correcting our lines, that is, verifying our location of the pier to see that it was exactly on the line where it was supposed to be.

Q. Is that the same ladder you testified to that was on the float in view 1?

A. That is the same ladder.

Q. And it ran up from the float on to the side of the pier?

A. Yes.

Q. And referring to view 3, you have set forth a stairway there. Is that the stairway that was there at that time?

A. That is the stairway that was there at that time.

Q. And does this represent the float along there?

A. That is the float at the North end.

Q. And this is the ladder?

A. That is the ladder.

Q. This No. 2 is a side view; No. 3 is the end view, and No. 1—

A. The plan—

Q. Looking down?

A. Looking down.

Q. Mr. Holmes, do you remember on or about

October 2, 1911, of seeing any one sitting on the bank with his shoe off?

A. I do.

Q. Just state what the facts are.

A. Well, I was coming down the stairway, which is shown on the plan, to go to pier 6. I had an instrument and my assistant was with me. I noticed a man sitting there on the bank as I went by. It impressed itself on my memory because the man sat there with his shoe off, so I naturally supposed that he had been hurt, although I did not go over to investigate, being busy at the time; and seeing more or less accidents on numerous pieces of work that I have been on, I do not pay much attention to them.

Q. Did you know Mr. Moore at that time?

A. Not to my knowledge. To the best of my recollections I did not know him.

Q. Of course you don't know who it was, only you remember of seeing some one there at that time?

A. That is all. I could not point the man out.

Q. Is that the only time you saw any one there with his shoe off on the bank?

A. Yes. Yes, that is the only time that I remember of seeing any one sitting on the bank there.

Q. Was that on the East bank of the river?

A. It was on the East bank of the river.

Q. What is the fact, Mr. Holmes, as to whether there were many form boards laying there on the bank?

A. There were numerous form boards laying around at that time.

Q. And of what length were they?

A. None longer than 16 feet, and some shorter than that—possibly running down to the shortest length would be about 8 feet.

Cross Examination.

Questions by Mr. GILTNER:

Were you in this city on the 10th day of December, 1912?

A. 10th day of December?

Q. Yes.

A. I don't think I was. I was employed at that time in Central Oregon, or was about to leave for Central Oregon at that time.

Q. Well, do you know whether you were or not?

A. No, I do not know whether I was or not. I could very easily tell by consulting the records or diary which I keep whether I was here at that time.

Q. In whose employ were you at that time?

A. The 10th day of December?

Q. Yes.

A. In Mr. Modjeski's employ.

Q. Who is he?

A. He is a consulting civil engineer of Chicago.

Q. Who?

A. A consulting civil engineer of Chicago, his main office is in Chicago.

Q. You say you were in the employ of the defendant company in the construction of this Broadway Bridge?

A. I have never been in the employ of any one

in the City of Portland except Mr. Modjeski.

Q. What business did he have? Who was he? He was employed on the Broadway Bridge, was he not?

A. Mr. Modjeski?

Q. Yes.

A. He was employed by the City of Portland as a consulting engineer.

Q. And you were assisting him?

A. I was assisting Mr. Modjeski, yes. I was on his work.

Q. Now, you cannot remember whether you were here on the 10th day of last December?

A. I do not, for the simple reason that close to that time, on the 10th or 12th, I left for Central Oregon point. I also came back a number of times; was in and out of the city for possibly two weeks, ranging from the 8th to the 15th or the 20th of December.

Q. Do you remember when this case was tried before?

A. I do not.

Q. You say you came here last June?

A. No, sir. I said—

Q. In June, 1911?

A. That is correct.

Q. Are you acquainted with Mr. Alexander?

A. I am.

Q. Have you had any talk with him about this case?

A. Yes, sir, I have.

Q. What makes you know that on the 2nd day of October, 1911, you saw a man sitting on the bank

of the river with his shoe off? What makes you know that?

A. Well, the statement that I made that I saw a man sitting there on the 2nd of November is merely about that time, and my knowledge that has come to me since has verified the fact that it would be the 2nd day of November.

Q. Second day of November?

A. Second day of November, yes.

Q. You are positive that it was the second day of November?

A. No, I am not positive that it was the second day of November.

Q. It might have been the 5th day?

A. Yes, it might have been the 5th day.

Q. It might have been the 6th day?

A. Yes, sir.

Q. But you are positive it was in November?

A. Positive it was in November.

Q. Now, is there anything unusual to see a man sitting on the bank of the river with his shoes off? Might have been in wading in there, or something of that kind?

A. I never saw but the one man.

Q. Yes, but is it anything unusual to see a man sitting on the bank of the river with his shoe off?

A. Well, possibly in November it would be unusual, the water being cold at that time.

Q. Well, now, did you make a note of that in your book?

A. Of the accident?

Q. Yes. No, no. I mean of this man sitting on the bank of the river along in November, 1911.

A. I did not.

Q. Well, how did you happen to state, or whom did you happen to state to, that you saw a man sitting on the bank with his shoe off? Whom was it you stated that to? Didn't some one ask you if you did see him?

A. Yes, stated to Mr. Senn just now.

Q. Well, I mean before you testified in this case. Whom did you talk to as to whether you saw a man sitting on the bank of the river in November?

A. Well, I might have mentioned it, but I don't know to whom. I don't recollect that I ever did mention it.

Q. Isn't it a fact that you were asked that question, and you were talked to about this before you came to testify in this case?

A. I talked to Mr. Alexander and Mr. Senn in regard to the case.

Q. And you then volunteered to them that you saw a man sitting on the bank of the river with his shoe off, didn't you?

A. When they called my mind to the case, I did, yes.

Q. Well, they called your attention to the facts before you remembered it? Isn't that a fact?

A. Mr. Alexander spoke about the case and the condition of the work at that time. That brought it to my mind again, yes.

Q. Now, how do you know it was November?

A. Well, we were sinking pier 6 at that time. We had it possibly half way down, and the number of feet escapes my memory now, and the work that came up about that time in connection with pier 6 is directly in conjunction with the work I was doing at that time. So you see from my records of what I was doing at that time on the work confirms the fact that it was in the month of November, or at the best the latter part of October.

Q. Then you were working at that time on pier 6?

A. We were doing work on pier 6 at that time, yes. I beg your pardon, I should say pier 5.

Q. Where was that located as to this pier 7?

A. It was 600 feet west of pier 7.

Q. How long had you been working on that pier?

A. Since—

Q. I mean yourself, prior to that time?

A. You mean on pier 5?

Q. Yes.

A. We started there to the best of my knowledge about the first of October or the latter part of September.

Q. Were you there continuously working on that pier?

A. No, I was working—my personal service on that pier required all the time?

Q. Yes.

A. No, my work covered all the piers that were in the course of construction.

Q. Well, now, on this day of November on which you saw this man sitting on the bank of the river—

were you working on that pier that day?

A. On pier 6?

Q. 5.

A. Pier 5, I beg your pardon.

Q. Yes.

A. Pier 5. Yes, we did work on that pier that day.

Q. You were there all day?

A. No.

Q. Where were you during the day?

A. Well, if you are familiar with bridge work you know there are various duties—you are confined for probably 30 or 40 minutes—

Q. I am not asking you that. I am asking you where you were working in addition on that pier that day.

A. Various points on the site of the Broadway Bridge.

Q. Tell this jury what these points were, and where the points were.

A. Beginning at Hoyt Street on the West side, from the East property line of Hoyt Street to the West property line of Larrabee Street on the East side, is the work that we had at that time.

Q. That was in November, you say; about November 6th or 2nd?

A. November 2nd.

Q. Now, what were you doing, or were you over on pier 7 on that day?

A. Pier 7. Our office is located, was located at that time at Cherry and Crosby Street, which is one block from Broadway, one block South of Broadway.

The most convenient way for us to get on the work was to walk from the office where we kept all our instruments and materials we used in the work, was to walk down a path directly to the center line of the bridge and down a stairway there on to the float mentioned at pier 7. That was the way we used of getting from one side of the river to the other and to the piers out in the river.

Q. And did you go on to pier 7 on that day?

A. On to pier 7 on that day?

Q. Yes.

A. Yes, I think there was not for a time there, 2 weeks, that I was not on the pier.

Q. Well, do you know positively—were there any days that you were not on pier 7 during the month of November?

A. I don't know that there were not days that I was not on pier 7. I think that I was on pier 7 every day.

Q. At the time you saw this man sitting on the bank of the river that you speak of, did you go on to pier 7, or did you go on over to pier 5?

A. I stepped on the float and from the float into a boat and went over to pier 5 at that time.

Q. How long did you stay on pier 5?

A. That is a little hard to remember, but I should say the work that I was doing at that time would have taken me possibly three-quarters of an hour.

Q. Then where did you go?

A. My movements are not just exactly certain after that. The chances are that I brought the in-

struments back to the office.

Q. What time was it you went to work that morning?

A. Well, I can only tell you in a general way of it. I went to work most every morning between half past seven and possibly a quarter after eight.

Q. Well, then, it was about a quarter after eight when you went to work that morning?

A. Well, it might have been half past seven, or it might even have been seven o'clock.

Q. Well, wasn't it 9 o'clock?

A. It is not hardly possible that it was 9, because the mornings—the work was being rushed at that time so much that I could not be off the job.

Q. Well, then, it must have been probably about between 7 and 8 o'clock.

A. Between 7 and 8 o'clock would probably be the time I went to work that morning.

Q. And between seven and eight o'clock in November, 1911, you saw this man sitting on the bank of the river?

A. Well, not between seven and eight o'clock. I could hardly say as to the hour on which I saw him.

Q. You saw him, you say, when you were going to work?

A. When I was going to do that particular piece of work, not when I was going to work in the morning.

Q. What particular piece of work were you going to do?

A. The location—it would be—probably be rather a lengthy explanation—the location of piers requires

some instrument work that is more or less intricate, and to do that we locate from a base line on shore. And we have to make numerous trips to the pier in question in order to get the levels on the corners of the coffer-dam. The levels is, I think, what I was after at that time, getting levels.

Q. What time was that that you saw this man on the bank of the river?

A. I could not say positively.

Q. Was it in the afternoon or forenoon or noon, or what time?

A. I could not say positively as to what time of day it was when I saw the man on the bank of the river.

Q. Well, do you mean to say you saw that man sitting on the bank of the river?

A. I don't know the man, I am sure. I possibly would not remember him. I can't say that that was the man, no.

Q. Now, who called your attention to the fact that a man was sitting on the bank of the river with his shoe off, Mr. Alexander or Mr. Senn?

A. Well, after the—when the incident was discussed, it recurred to my mind that I had seen this man, and I spoke of my having seen him to Mr. Alexander first and to Mr. Senn later.

Q. Hadn't they told you that there had been a trial of this case before?

A. Yes.

Mr. SENN: We object, your Honor, to that line of examination.

Mr. GILTNER: This is cross examination.

Mr. SENN: I don't think it is fair for counsel to insinuate these things. That hasn't any bearing on this case.

Mr. GILTNER: Well, I will show that it has.

Q. Didn't they tell you about the testimony of a Mr. Chalfan and Hoffstatter in regard to their seeing a man sitting on the bank of the river with his shoe off?

A. No. I didn't hear anything about the details from anybody of the case having been tried before. I merely knew that it was tried before.

Q. Well, didn't they tell you that Mr. Chalfan and Mr. Hoffstatter had seen a man sitting on the bank of the river with his shoe off—didn't they tell you that?

A. They did not. They did not. Possibly after I mentioned the fact that I had seen the man sitting there, they may have said that that was in line with what other people had said. But certainly not—

Q. Isn't it a fact that you did talk about that?

A. No. Well, I said possibly—I will take that back. It is a fact that the man sitting on the bank was not mentioned to me, that I recalled that incident.

Q. Now, what did they say to you about these men, stating that they saw a man sitting on the bank of the river with his shoe off—what did Mr. Alexander say to you about that?

A. There wasn't anything said about the man sitting on the bank of the river. The questions they

asked me merely had to do with the work at that time—the condition of the work at that time. And in asking about the condition of the work at that time, and my telling them I remembered the man sitting on the bank and spoke of it.

Q. What connection did you think that had with this case?

A. Well, it is very reasonable to suppose that he was the same man.

Q. Yes. But then before that, you knew that, they had told you that a man had run a nail in his foot, didn't they, on the bank of the river?

A. They had told me.

Q. They had told you that before?

A. They didn't say he had run a nail in his foot certainly—it didn't interest me possibly.

Q. I am not asking you whether it interested you. But they had told you prior to this time that a man was suing the Union Bridge & Construction Company for running a nail in his foot, didn't they?

A. Yes, sir.

Q. And they had told you then that there had been a trial of this case before, didn't they?

A. Yes.

Q. And they told you then at that time that they had witnesses here who testified that they saw a man sitting on the bank of the river with his shoe off, who had run a nail in his foot, didn't they?

A. No, they did not.

Q. There had not—

A. They did not.

Q. When did they tell you that?

A. They did not tell me that. They consulted me in regard to the condition of the work at that time.

Q. But didn't you just testify that they had told you after you had suggested it to them that two other witnesses had testified to that in that other case?

A. After—

Q. Yes.

Mr. SENN: No. The witness did not testify to that.

A. After I was consulted in regard to the condition of the work, I mentioned having seen the man, and after that they told me that that was in line with what others who had witnessed the thing had seen.

Q. What other witnesses had testified—and you are positive now that that testimony—that that statement that they made to you was after you had suggested to them that you saw a man there?

A. Very positive.

Mr. GILTNER: Are you going to offer this in evidence?

Mr. SENN: Yes.

Q. Who was it told you that? Which one of these gentlemen, Mr. Alexander or Mr. Senn?

A. I think it was Mr. Alexander.

Q. Where was it?

A. At our office on the East bank of the Willamette River.

Q. What?

A. At our office on the East bank of the Willamette River, which is at Crosby and Cherry Street.

Q. Now, coming back to the proposition there as to the time you saw this man sitting on the bank of the river. You cannot tell whether it was in the forenoon, the afternoon or at noon, can you?

A. No, not positively.

Q. It might have been in the forenoon about 10 o'clock, isn't that a fact?

A. It might have been. It might have been any time during the day. I cannot say positively just what time it was.

Q. It was two years ago, pretty near, wasn't it?

A. Two years ago this coming November.

Q. And you remembered back that you saw a man sitting there two years ago, this incident?

A. I did.

Q. Had you made a note of it in any place among your notes?

A. I had not.

Q. Now, how long were you on this East pier, this pier No. 7, on this day in November that you speak of?

A. How long was I on pier 7?

Q. Yes. That day that you went to work that you saw this man sitting there.

A. That would be a little bit hard to say. I could not say as to the exact number of minutes or hours I was on that pier at that day.

Q. You say that that was the condition of the shore line on that day on which the man was sitting these?

A. That was the condition of the shore line that

day.

Q. Well, now, have you got the notes with you from which you made this shore line on that day?

A. I have not.

Q. Where are they?

A. The notes from which that was made are in various places, some of them in note books which we have at the office there of the shore line, of the water line of course you know, and the Government has notes showing the water line at that time.

Q. Have you got the original diagram of these on that day showing the shore line?

A. Well, we don't make a diagram daily.

Q. Then you didn't make this from an original diagram? Then you didn't make this shore line from an original diagram? This you made up yourself, didn't you?

A. I made that up from notes of our work.

Q. Now, where are those notes?

A. Well, if you were a little bit more familiar with the Broadway Bridge—

Q. I didn't ask you that.

Mr. SENN: I think he has a right to explain it.

Mr. GILTNER: He said he made it from notes.

COURT: Can you tell where those notes are?

A. The notes might be in various places, various different books. You can't keep everything in one small book in the construction of a bridge of that size. In case you want information of a kind I have shown there in the sketch, it is necessary to go through quite a number of books and to correlate different

matters.

COURT: Where are the notes? Who has them?

A. The notes from which I made that sketch?

COURT: Yes.

A. They are in Mr. Modjeski's office.

Mr. GILTNER: Will you bring those notes here so as to show us the notes from which—Who made those notes, the original notes?

A. Some of them were made by Mr. Weidemann, some of them by myself, some by Mr. Carter, others by Mr.—

Q. Were there any notes among those notes you speak of that you made at that time in regard to this shore line in your handwriting?

A. No. And showing the shore line?

Q. Yes.

A. The notes would not show the exact shore line at that time. The notes would show the height of the water on the pier and the ground line would naturally follow the height of the water, and we know how much ground there is over the top of the caisson there.

Q. Then your notes do not show the shore line?

A. No. It would be impossible to make a daily picture of that.

Q. When you made this shore line there, you made it from what you figured what it might be.

A. That is practically correct, yes.

Q. Now, I wish you would answer this to the jury. Isn't it a fact that the water ebbs and flows there some?

A. You mean that the tide had an effect on it?

Q. Yes.

A. Yes, that is correct.

Q. And do you know whether it was high tide or low tide when this was made?

A. No. I do not. I don't remember.

Q. Then if this was made at low tide, the land, the shore line, would not extend out there, would it?

A. There would be some difference between the shore line at high tide and low tide.

Q. Do you know how much the tide ebbed and flowed there at that time?

A. From my knowledge of what—I believe at 10 feet there is no tide. Under 10 feet and approaching zero on the city meter there is about 2 feet of tide.

Q. Do you know what the height of the tide was on the morning of November that you speak of, 1911, when you saw this man sitting on the bank of the river?

A. Do I know?

Q. Yes.

A. I will ask you to repeat that question.

Question read.

A. I do not.

Q. Have you investigated from the records here, the city records, or the engineer at the Custom House, to find out what the height of the tide was for that day?

A. I merely verified my own observations made at that time as to the height of the water, from the Government office here.

Q. Well, now, what did you find out?

A. I found the height of the water to read 2.2 feet on the Government gauge, which means 5 and about 5-10 feet on the city gauge, the city datum being 3-3|10 feet above the Government datum.

Q. On the day on which you went by there in November—you say that is the day on which you saw him sitting there on the bank of the river—did you notice whether there was any ground extending or the shore line extending as to the place where you mention here, as you have put down there? Did you look to see whether it was?

A. From having worked around there and knowing the condition of the river during October and November, and knowing the shore line there, I can say positively that the shore line did extend I should say very closely to what is shown on the diagram.

Q. Well, now, did you notice—I want you to answer this question—did you notice on this morning, on this day on which you saw this man sitting on the bank of the river, as to whether or not the shore line extended as it was on that map? Did you go and look to see?

A. I did not.

Q. No, you did not?

A. I did not.

Q. And that date might have been on the 6th as well as the 2nd day of November?

A. It might have been.

Q. And might have been a little later?

A. Might have been a little later. The shore line

did not change during October and November very much, possibly a matter of a few inches.

Q. Now, coming back to this float. Mr. Senn, will you please hold that there? Didn't that float vary in distance from this pier or from this coffer-dam? Didn't it float away and to and from it?

A. Not greatly—a matter of inches if it varied at all. It had to be tied slack on account of the tide coming in so as not to swamp it.

Q. What was the slack? Wouldn't that float float 4 or 5 feet away from this coffer-dam?

A. Certainly not.

Q. You are positive of that?

A. Very positive.

Q. You are sure of that?

A. Very sure.

Q. And you are sure that on the day on which you saw this man sitting on the bank of the river with his shoe off that this float was right up against this coffer-dam?

A. Yes, sir.

Q. Well, it was tied with a rope, wasn't it?

A. Tied to what?

Q. The float was tied with a rope against the coffer-dam, wasn't it?

A. Yes.

Q. State to the jury where that was tied.

A. It was tied on the end nearest the side view and to that corner of the coffer-dam.

Q. Whereabouts?

A. Right where Mr. Senn's finger was first; right

there.

Q. Put a letter X there, where he says that was.
(Mr. Senn marks an X)

Q. You noticed that in the morning when you went over there, didn't you?

A. Well, that was where it was always tied. It is safe to assume it was tied there on that day.

Q. Never was loosened at all?

A. Not to my knowledge.

Q. That is, the rope that attached it never has been unloosened from there at all?

A. Not to my knowledge. It might have been.

Q. Now, then, you came on to this coffer-dam that morning to take a boat, did you?

A. Not on the coffer-dam. I was not on the coffer-dam at the time I spoke of before to take the boat. I took the boat from the float.

Q. Oh, you took the boat from the float?

A. Yes.

Q. What else did you see around here, anything else around this coffer dam?

A. No, I can't say that I noticed anything positively at that time.

Q. Were there any boats, any other boats around there?

A. There were. There were barges there at that time. I don't know that I noticed them particularly, but I know that they were around about that time.

Q. Well, you say you didn't notice them particularly. Were there—would you swear there were any there?

A. No, I would not swear there were any there. While I might know in my own mind that they were there, still unless you notice a thing particularly you probably would not care to swear to it.

Q. You are not prepared to say whether there were or not?

A. No.

Q. Then, when you stated there was a barge or barges around there, you were guessing at that, were you not?

Object to drawing conclusions like that.

Q. Isn't that a fact?

COURT: I will sustain that objection.

Q. Then you are mistaken about that?

Mr. SENN: We object to that.

COURT: I will sustain that objection.

Q. I asked him before if he was not guessing; asked him if he was mistaken about that.

COURT: That is the same question.

Q. Did you see any men, any other persons, around there that morning?

A. I could not say that I did. I might have seen them but it was not impressed on my mind.

Q. Did you see any one else on the bank of the river at that time?

A. There might have been. It was not impressed on my mind that there were. There was not any reason for me to remember it, and I can't say that there was or was not.

Q. On the morning on which you say that you saw this man on the bank of the river taking his shoe

off, did you look to see whether there was any staging between the coffer-dam and the bank of the river?

A. I did not look at that particular time to see whether there was any staging.

Q. When did you particularly look and see whether there was a staging?

A. I possibly noticed every time I was on that pier because I had to climb around there a good bit myself to verify our points on there. And staging would have helped me considerable had it been there. That is, in my climbing around I have to go places where no one else has to go.

Q. Staging running from the coffer-dam to the bank of the river would have helped you if it had been there, would it?

A. Merely in reaching the point that I wanted to get to more conveniently.

Q. Yes, it would have been more convenient for you if there had been one there?

A. For my own personal use, yes.

Q. And that is why you looked to see if there was any there?

A. That is why I noticed that there was no staging around there at any time that I worked there.

Q. Now, when was it that you noticed that?

A. I noticed it every day during all the time we worked on that pier that we never had any staging there.

Q. Now, you say there were logs extending out from the riprap on the bank of the river into the river towards the west, did you?

A. Towards the west, yes.

Q. How many logs did you notice were extending from the riprap into the river?

A. I know that at the southeast corner of the pier there were logs extending out there because we would get our boat up back around there to get on the pier in another way, to get to the top of the pier in another way, so I noticed those logs. Then from being there so often I noticed other logs back further in the bank and know the condition of the bank, and noticed the logs that they had down there.

Q. Did you notice particularly that that was the only place where there was any log extending out from the riprap work into the river?

A. Not that that was the only point. There were more points than that where logs stuck out.

Q. How many points along the East side of this coffer-dam would you say you saw logs sticking out of there?

A. Well, at some point or other on the bank there are probably logs sticking out there all the way along the bank.

Q. And that whole extent of the coffer-dam?

A. The entire length of the coffer-dam; however, not down close to the water. Some of them are up higher in the bank, as high as 20 feet.

Q. The whole length of the coffer-dam the logs were extending out?

A. At some point or other on the bank.

Q. Did you notice the distance—or how near that

these logs would come to the coffer-dam?

A. No; not to say exactly.

Q. Well, you never took any measurements to see whether they were two feet, three feet or four feet, did you?

A. No. No, I did not.

Q. They might have been within two feet for all you know?

A. Could not have been within two feet, for the reason that I said, or I believe I said, we got our boat around in there, to get on the pier in another way.

Q. Well, now, on this day on which you saw this man sitting on the bank of the river, you say that there was water along in here?

A. That is land where you have your pencil there now.

Q. That where the "G" is?

A. Yes, that is all land.

Q. You are positive of that?

A. Very positive.

Q. But you never walked from the coffer-dam on to this land, did you?

A. Many times.

Q. I mean on this day on which you saw this man sitting.

A. I possibly did it on that day.

Q. On that day?

A. Possibly did. I would not say positively, but it is very probable I did.

Q. You would know positively if you walked on the land from the coffer-dam on to the bank of the

river? You know positively there was no structure here or platform for a man to walk on from the cofferdam on to the bank?

A. I do know positively that there was no structure there of any kind.

Q. That was in November, 1911?

A. That applies to a special time, covering probably two months there.

Q. Well, I mean the day on which you saw the man sitting on the bank of the river, which you said was in November, 1911.

A. That applies to that day also.

Q. How near to the shore line did the riprap work come on the bank on the side of the river?

A. Some of it was directly at the shore line. Some of it was—considered in a horizontal plane would be any number of feet, from 10 to 25. As I explained before, it was in various positions on the bank; not all of it on the shore line, nor all of it above the shore line.

Q. Well, did it slope up about like that?

A. The bank was very steep slope—what is known as about one to one slope, or 45 degree angle.

Q. How deep was the water here where this float was?

A. Where the float was extending from the shore line out—never having made any soundings I could not say positively.

Q. You don't know?

A. No, I don't know.

Q. How deep was the water here at the pier, the

north pier?

A. At the corner of the north pier?

Q. No. Over here at the south part of the north pier. How deep was the water there?

A. If you ask me to say positively I can only say that I didn't make any soundings there and I don't know.

Q. You don't know?

A. No.

Q. How deep was the water here, if you know, at the south pier, at the north portion of the south pier?

A. There was not any water at the northeast corner of the south pedestal. That was land.

Q. There was not any water here at all?

A. There was not any water there at all.

Q. Then according to your diagram here, this was all land in here?

A. That is water. I stated the northeast corner of the south pier, which is where you say.

Q. That was water?

A. That is water.

Q. Oh, that is water in there. And the land came, extended right up to the coffer-dam where these lines are that you speak of?

A. The shore line shows the extent of the land there.

Q. And a man could step right off the coffer-dam on to the land here and walk over on to the shore, couldn't he, without getting his feet wet?

A. When he stepped on to the land he was on the

shore.

Q. He could do that without getting his feet wet?

A. He could do that without getting his feet wet at that point, yes.

Q. That was along in November, was it, or December?

A. That was in November that he could do it, and October; there is a space of probably 2 months, as I said there.

Q. Well, beginning with what time—October and the last part of September?

A. Well, probably say beginning around the 10th of October, as near as I remember.

Q. Tenth of October?

A. Near there somewhere. I can't say positively.

Q. Prior to that time there was water here, then, was there?

A. Well, not—of course, as I said before, the shore line changed.

Q. Of course. But I say prior to the 10th of October—you want the jury to understand that the shore line was not as it is here?

A. Prior to—yes. I didn't get your word.

Q. Prior to that time?

A. Yes.

Q. And there would be water there, wouldn't there?

A. Yes. Not at all times, but—

COURT: Let me see that.

Mr. SENN: I would just like to ask the witness one question.

Mr. GILTNER: I am not through with the witness yet.

Mr. SENN: Oh, I beg your pardon.

Q. You stated that you made no notes at that time in your own handwriting as to the height of the water at the point between the two piers and the coffer-dam, did you not?

A. I did.

Q. And you made this drawing from notes made by somebody else at that time?

A. Yes; although possibly some of them were my notes. I could not say.

Q. Well, now, I want to know positively whether they were in your handwriting and you made them.

A. No, it would be better to say that they were not notes made in my handwriting, and that I made them.

Q. Those notes were made by actual measurements over there of the water, or did you go to the civil engineer's office, the city engineer's office to get them?

A. Well, we—the height of the water was noted if there happened to be an omission in entering the fact into our notes, why, the Government office was consulted in regard to the height of the water at that time.

Q. But you didn't go and measure the water there yourself, did you?

A. No.

Q. And you never made any notes from any measurements that you made?

A. No.

Mr. GILTNER: I move, if the Court please, to strike out that portion of his testimony wherein he states that he made this. He never measured the water there. Whatever was made was not made from his notes—might possibly have been made, but he doesn't know—but was made from what he got down here at the Government office, as not being the best evidence, as not being the best evidence and being hearsay, and not proper to come before this jury as to what the height of the water was there at that time.

Mr. SENN: Your Honor understands that this is simply introduced as a matter of illustration. If he has any witnesses who want to contradict it, they have that right. We have a perfect right to have him illustrate. There is no question that that is not accurate either.

Mr. GILTNER: I am not going to argue this question to the Court. I merely make the motion to your Honor.

COURT: I overrule the motion.

Mr. GILTNER: I save an exception to the ruling of the court.

COURT: Is that all on cross-examination?

Q. On the day on which you saw this man sitting on the bank of the river, did you see anybody else there?

A. It was not impressed on my mind. There might have been, and there might not have been. I can't say that I saw anybody there.

Q. If there had been any number of men there

you would have remembered that, wouldn't you?

A. It is very probable that I would, yes.

Q. How far away were you from this man when you saw him?

A. About 20 feet.

Q. Were you coming down the steps and going on to the float when you saw him, or where were you when you saw him?

A. I was coming down the steps and coming on to the float.

Q. And that is when you were going to work?

A. When I was going to do the particular piece of work which I explained before was necessary on pier 5 at that time.

Q. Had you been up on top of the bank—away up on top?

A. Yes.

Q. And you came down there at that time and that is the time you saw him?

A. Yes.

Q. At the time you saw him, did you get on to the float then and go on over on to the coffer-dam?

A. I stepped on to the float and got from the float into our boat and went to pier 5.

Q. Then you were right up next to this coffer dam when you got into the boat?

A. I was.

Q. Was there anything there to attract your attention. Suppose there had been a steam engine or a donkey engine working there, would you have known it?

A. No. I would not have noticed it particularly. It is not unusual to see them around different points on the bridge.

Q. Well, if there was a donkey engine working, wouldn't you have noticed that? Wouldn't you have heard the noise of the donkey engine working there?

A. I would have heard it, but it would not have impressed itself on my mind because it is a very familiar sight.

Q. Then you haven't any map the same as that in your original records, have you?

A. We have not.

Q. I wish you would bring into this court these original notes and produce them here by 12 o'clock, if you can, from which you made this.

A. That would be impossible for any man to do.

Q. You can't do that?

A. I can not.

Q. Who asked you to make that map?

A. Mr. Alexander.

Mr. SENN: We object to that as having been gone over.

Mr. GILTNER: No, I have not asked him that.

Q. Who asked you to make that map?

A. Mr. Alexander.

Q. What were you paid for making that?

A. I have not—

Mr. SENN: Objected to as irrelevant.

COURT: I think that is objectionable.

Q. I will ask him if he was paid anything for making it.

COURT: I think that is objectionable. He has a right to be paid for making it.

Mr. GILTNER: Save an exception to your Honor's ruling on that question. I want to test the witness's credibility by that question. And we have a right to search his heart in regard to these matters. That is all I ask.

COURT: The objection will be sustained.

Mr. GILTNER: Save an exception to your Honor's ruling.

COURT: Very well. You have a right to except.

Mr. GILTNER: Now, at this time I make a motion that the testimony given by this witness as to this map and as to the shore line and the height of the water be stricken from the records of this case, and ask the Court to instruct this jury that they should disregard that testimony for the reason that this witness has testified that the evidence that he has given here in regard to this map and in regard to the height of the water is evidence from original records that he did not make, and which he says it is impossible for him to produce here at this time.

Mr. SENN: Well, the Court ruled on that once.

Mr. GILTNER: Not that feature of it.

COURT: I don't think it is necessary to argue it. The Court will overrule the objection.

Mr. GILTNER: Save an exception to the ruling of the Court.

COURT: I understand you have offered that map, have you, in evidence?

Mr. SENN: Yes, I will offer it.

COURT: Only for—

Mr. SENN: Matters of identification and explanation.

COURT: Well, as explanation.

Mr. GILTNER: The positive evidence went before the jury.

Mr. SENN: If it is incorrect he can get any number of witnesses to testify to it if he wants to.

Q. How long did it take you to make that map?

A. In hours and minutes you mean how long?

Q. Yes. How long did it take you to make that map?

A. Oh, an hour or an hour and a half, possibly two hours, to do the actual drawing—make the actual lines of it.

Q. How long did it take you to get the data with which to make it?

A. Well, that was a matter of days, of several days, to get that, because it was in various places.

Q. It took you several days?

A. Yes.

Q. Have you got your notes? Did you write out any notes from the original records?

A. No, I did not. I made them on pieces of scratch paper, or something just to use in connection with the making of the map.

Q. Where is it? Where is your original—where is that scratch paper?

A. Probably destroyed. I don't know. After I got it on the map I don't know what I did with it. I probably threw it in the waste basket.

Redirect Examination.

Mr. SENN: I just wanted to ask him one question. Did you put any date on this map?

A. I did.

Q. I wish you would read that date.

A. October 2, 1911.

Q. Is that when the drawing was made, as of that date?

A. The drawing was made of the condition of the work as at that time.

Q. As of that date?

A. Yes.

Excused.

C. H. WHEELER, called for the defendant, having heretofore been duly sworn, testified as follows:

Direct Examination.

Questions by Mr. SENN:

Doctor, you have already been sworn. Did Mr. Moore make a statement to you after the accident as to how it happened, or where he was hurt?

A. I am hazy on that question at the present time. It seems to me—

Mr. GILTNER: Just a minute. You can answer that question yes or no, Doctor. I can't hear very well.

COURT: He said he was hazy on that question at the present time.

Q. Well, I will ask you this question, Doctor. In the other trial, when the question was asked you by Mr. Spencer, whether you didn't answer as follows:

“As I understand you, Doctor—”

Mr. GILTNER: If he is going to undertake to impeach his own witness, if that is what he is trying to do, I object to it, for it is improper.

Mr. SENN: I have a right, your Honor, to refresh his memory on that point.

Mr. GILTNER: Then you have a right to show him—under our statutes you can’t impeach your own witness unless you show you are taken by surprise.

COURT: This is not an attempt to impeach his witness, as I understand it. He wants to refresh his memory.

Mr. GILTNER: Well, then, let him see it, without making any statement to the jury.

Mr. SENN: I have a right to introduce this testimony in evidence if I want to.

Mr. GILTNER: I don’t think he has.

COURT: We will consider that when the question is raised.

Mr. GILTNER: Before the Doctor testifies to anything, if there is anything in writing here, I think the Doctor is entitled to see it, and I object to his reading anything before this jury.

COURT: He is entitled to see it if he calls for it. And it is not necessary for the attorneys to instruct him. You may proceed, Mr. Senn. You are taking up a good deal of time.

Q. Whether at the other trial, when the question was asked you by Mr. Spencer, as I understand you, Doctor, he told you he stepped on a board that had a nail in it. That is the way you recollect it, and your

answer was, "Yes, I believe the nail was up so as to drive in his foot." Do you know whether you testified to that?

A. I think that is the substance of the testimony. Whether it is the real wording or not I do not know.

Mr. GILTNER: What is that?

A. I say I think that is the substance of the testimony, but whether it is the real wording of it, I can't recall. It is a long time to remember, two years.

Q. And in answer to the following question asked you by Mr. Giltner: "Q. Doctor, will you state, in your judgment, did Mr. Moore tell you what was the cause of the puncture in the sole of his foot?" "A. Well, as I remember—"

Mr. GILTNER: Well, now, before he calls his attention to that, it is proper to ask him the question if he remembers what he answered to that question.

COURT: Well, he may ask him that. You can put that question to him. Ask the witness if he remembers.

Q. Do you remember that question, Doctor, from Mr. Giltner?

A. No. No, I could not remember the testimony, the questions and answers.

Q. Do you remember a question in substance like that?

A. There may have been a question answered, but of course it didn't—I have too many other things to remember.

Mr. GILTNER: Let's see this. Is this the Doctor's testimony?

Mr. SENN: That is the Doctor's testimony.

Mr. GILTNER: Where is this you have read? I want to see it. Just mark it.

Q. Now, you read this question to the Doctor, and you said in response to a question Mr. Giltner asked—

Mr. SENN: Yes.

Mr. Giltner: Isn't it a fact that this testimony here shows it is direct by Mr. Spencer, and not by Mr. Giltner?

Mr. SENN: You called Mr. Wheeler. That is your own question; then when the answer came out you didn't like it.

Mr. GILTNER: Now, I object to his making a statement of that kind, whether I liked it or not. To show you that I had no objection to that at that time, I am willing to read the Doctor's answer to this jury, to that question, this last question that he stated.

COURT: Very well. Read the answer.

Mr. GILTNER: "A. Well, as I remember, he said he jumped on a board containing nails, the puncture went through the sole of his foot, the sole of his shoe, and into the bottom of his foot." I have no objection to that.

COURT: I guess there is no question but what the man was injured in that way.

Mr. SENN: That is all, Doctor.

Mr. GILTNER: That is all, Doctor.

Excused.

ARTHUR NELSON, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SENN:

Mr. Nelson, where do you live?

A. I live at 102 Cook Avenue.

Q. Here in Portland?

A. Yes.

Q. Whom are you working for?

A. Now?

Q. Yes.

A. At the present time I am not working for anybody.

Q. You are not in the employ of the Union Bridge & Construction Company at the present time?

A. Well, I have been this winter.

Q. This winter, but not now?

A. No.

Q. Were you working for the company at the time Mr. Moore was hurt on October 2, 1911?

A. Yes.

Q. What was your job, Mr. Nelson?

A. Well, I was machinist.

Q. Machinist. And what were your duties as such?

A. Well, I was looking after all the pipes and shafts on the air work, on the center.

Q. That is, you looked at the pipes and the air?

A. Yes.

Q. Did you see the accident to Mr. Moore?

A. No.

Q. You don't know how he was injured?

A. No.

Q. You know the conditions of the place down there, about the time they took the pipes out of pier 7?

A. Yes, sir.

Q. How do you know that?

A. I was around there and working there, taking the old pipes and shafts off.

Q. You were the machinist on the job?

A. Yes, sir.

Q. Was it your duty to take those pipes out?

A. Yes, sir.

Q. What kind of pipes were those?

A. They were 3 inch and 4 inch blow pipes and they had beam shaftings and had a bucket running up and down.

Q. How heavy were the shaftings?

A. Five or six hundred pounds, maybe heavier.

Q. How did you take them out?

A. Always used a derrick.

Q. Always used a derrick?

A. Yes, sir.

Q. I will ask you to refer to defendant's Exhibit 1.

Mr. GILTNER: For the purpose of saving the record, I move that this map be stricken from the records in this case and that this witness not be permitted to testify to it for the reasons I have already given in regard to the testimony of Mr. Holmes, for the reason it is hearsay testimony—just for the purpose of preserving the record.

COURT: The motion is overruled.

Mr. GILTNER: Save an exception.

Mr. SENN: Mr. Nelson, if you will just stand here in front of the jury.

Q. Now, Mr. Nelson, assuming that this is pier 7, as has been testified here to, and this place coming down here is a stairway, I will ask what this stairway here represents.

A. That is to go up and down.

Q. From the East side?

A. Yes, sir.

Q. And what is this along here marked "Float?"

A. That is the float.

Q. Where was the float anchored?

A. It was anchored to the casing.

Q. Of the coffer-dam?

A. Yes, sir.

Q. Was it necessary to tie it because of the current or tide?

A. Yes, sir. We tied it right to the bank closely.

Q. This would be down stream this way, and it would take the float over here?

A. Yes, sir.

Q. Now there is a place here marked "H," which is designated as a ladder. Where did that ladder go?

A. It went up on top.

Q. To the top of this pier?

A. Yes.

Q. How high was that pier?

A. I don't remember exactly. About 25 feet or something—

Q. Who used that ladder?

A. The engineers.

Q. How often would they use the ladder?

A. Oh, two or three times a day, or more.

Mr. GILTNER: I don't see the relevancy of this testimony, if the Court please.

COURT: I suppose they are trying to show that is the regular way to get out.

Mr. SENN: Yes, your man testified the float was not against here—it floated out.

COURT: Mr. Senn: There is an objection made—what is the purpose of that?

Mr. SENN: It is proper, your Honor, to show the conditions there, and not only that, to show—Mr. Moore stated that this float was floating around here in the river, and that he went out on the coffer-dam and got from the coffer-dam into a skiff. Now, our testimony is to the effect that this float was right against the coffer-dam; that men walked down the stairway on to the float and then on to the coffer dam.

COURT: You can show that.

Mr. SENN: And our testimony later on will show that he went down there too.

COURT: Very well.

Q. Now, you say that at the time of this accident or thereabout, October 2, 1911, you helped take out those pipes?

A. Yes, sir.

Q. Just state to the jury what you did.

A. Well, I disconnected the 4 inch pipe.

Q. What did you do?

A. I disconnected all them pipes.

Q. That is, you went down there and disconnected

them?

A. Yes, sir.

Q. And then what was there to be done?

A. To carry them away.

Q. How were they taken out of there?

A. The 4 inch pipe and 3 inch pipe I carried away myself.

Q. You carried them away yourself?

A. Yes, sir.

Q. What did you do with the other larger pipes?

A. I left them to the gang. I disconnected them, took the nuts and bolts off, left the rest of it.

Q. How did they get them out of there?

A. With the derrick.

Q. Where was this derrick laying?

A. Well, I tell you I can't exactly remember if it was there that day or not, but all I had to do was disconnect it. That is all I had to do.

Q. You don't know where the derrick was?

A. No, sir.

Q. Do you know whether or not they raised those pipes out with the derrick?

A. I only think they did because they were laying on the front of the barge.

Q. Where was the barge?

A. It was there.

Q. Do you know anything about the stage of the water there at low water along in October and November?

A. I don't remember.

Q. Do you know whether at any time there was a

shallow here back of the piers?

A. Yes, sir, at low tide.

Q. How do you know it?

A. At low tide, for I was working around there.

Q. Whereabouts—on the other side of the piers and coffer-dam from the bank, that is at the place marked "D?"

A. Yes, sir.

Q. How do you know that?

A. Stuck there myself.

Q. Did your scow ever get stuck on the ground?

A. Yes, sir.

Objected to unless it is limited to the 2nd day of October, 1911.

Mr. SENN: It has some value, your Honor.

COURT: We are examining with reference to that date, and I think this is approximate to it. The objection will be overruled.

Mr. GILTNER: Save an exception to the ruling of the Court.

COURT: Very well.

Q. Did you ever have any trouble with your scow getting stuck out here?

A. Yes, sir.

Mr. GILTNER: Same objection.

COURT: Very well. Same ruling.

Exception allowed.

Q. What is the fact, Mr. Nelson, as to whether one of these piers was on land, or in here marked "G?"

Mr. GILTNER: I object to this testimony as leading. He can testify as to the conditions of this prop-

erty here and of this land, if he knows, on the 2nd day of October, 1911. That is the day on which we are investigating this transaction. It may take me two hours to cross examine this man if he is going into this at length, and the questions are leading, and I wish he would confine himself to the day of the accident.

COURT: The objection is overruled.

Mr. GILTNER: Save an exception to the ruling of the Court.

Q. What was the fact as to whether or not there was land in here marked by letters "G" during October and November, 1911, and at about the time you took out these pipes?

A. All the dirt we took out from inside the sink was dumped around it.

Q. Was dumped around this coffer-dam?

A. Yes, sir.

Mr. GILTNER: Which side?

Mr. SENN: Was that at the places marked "G" where I am pointing to with that pencil?

A. Dumped on both sides.

Mr. GILTNER: Just a minute. Do you think this is fair for him to answer and testify on this side, when the witness has already said on the other side?

Mr. SENN: He didn't say that. I have referred to these as the letter "G."

COURT: He has a right to call his attention to the places, to the locality, and ask the question.

Mr. GILTNER: That is all I have to ask of him.

COURT: The objection is overruled.

Mr. GILTNER: I save an exception.

COURT: I think you will have to curtail yourself a little on your objections. You are taking up a great deal of time of the court here, and the court wants to get through with this case.

Mr. GILTNER: So do I, your Honor. I don't want to take up time. We can get through by his telling about it without him pointing to it.

Q. Mr. Nelson, I am pointing now to the letter "G" which is on the east side of this bank and near the east end of the coffer-dam, of pier No. 7—what was the fact as to whether ground was visible on or about October 2, 1911, and on or about the time that you took these pipes out here?

Mr. GILTNER: I object to that as a double question. I would like if you would put one question at a time.

COURT: That objection is frivolous and the Court will overrule it.

Mr. GILTNER: All right.

Q. What did you say about that?

A. All the dirt that was around there was taken out there from inside the cribbing when they was sinking it.

Q. When you were sinking this cribbing?

A. Yes.

Q. What did you do with the dirt?

A. Dumped it on that side, and some on this side—dumped the dirt on both sides.

Q. What is the fact as to whether there was dirt in here marked with the letter "G?"

A. Well, of course, there was low tide—the dirt showed up at low tide. Sometimes there was lots of water in here, right in here. I used to have a skiff around this way too. At low tide you could walk all around it.

Q. Walk all around the letter “G’s?”

A. Yes, sir.

Q. Now, supposing, Mr. Nelson, there had been some loose planks thrown in there, that were not nailed or spiked, and high tide had come in here, high water, what would become of these planks?

A. Could not get up to this float, this stairway.

Q. Went around there?

A. This float was in the water. You could not get out. You could not get on the river at all.

Q. What was being done with this form lumber that was taken off these piers?

A. Thrown down all around here—some piled up on the bank.

Q. At the time of this accident, Mr. Nelson, on or about October 2, 1911, and at the time you were taking these pipes out, what were you doing as to whether you were cleaning up there and moving out?

A. We was around both 5 and 6. Between we had to go over here and disconnect pipes and shafts. Then I had to look after the air, keep it in running order, so I used to be on this pier maybe five minutes, maybe three or four times an hour, and then on the other one—back and forth, all the time.

Q. Did you ever see any staging between this coffer-dam and the bank?

A. No, sir—only that float.

Q. It was the regular way for the men to get out on the coffer-dam?

A. Well, this float was up against the coffer-dam, so you could just step on the corner.

Q. How wide was this coffer-dam?

A. 15 or 20 feet.

Q. I mean the sill on it?

A. 12 inches.

Q. You had 12 inch spaces to walk around here on it?

A. Yes, sir.

Q. That was a sill laid right down?

A. Yes, sir.

Q. How high was it above the water?

A. While we was working we had it high enough to keep the water out on this side.

Cross Examination.

Questions by Mr. GILTNER:

Mr. Nelson, when they started in—do you know when they started in, the day on which they started in to take the gravel out of the coffer-dam, Mr. Nelson?

A. I don't remember.

Q. Do you know whether that was in October or November?

A. I don't remember at all the date.

Q. Were you present on this coffer-dam on the day on which Mr. Moore was hurt running the nail in his foot?

A. I think I was there in the morning, but I don't remember of it. I know when he was hurt I was out on pier 5.

Q. You were not over there at all?

A. No, sir. I was there maybe just before, maybe after.

Q. When did you first hear of Mr. Moore being hurt?

A. I heard right the same day—perhaps five minutes after.

Q. Now, you state the day on which Mr. Moore was hurt, then, this coffer-dam was filled with gravel, was it not?

A. No, sir. It was not. The gravel was outside.

Q. Well, you had taken the pipes out the day on which he was hurt, had you?

A. Yes, sir. I was going to take them out, some of them, and he was going to shovel gravel away.

Q. I know. But wasn't there a pipe about here in the coffer-dam, about 16 inches in diameter—one near the north pier and one near the south pier?

A. We had about three or four pipes there, and one right there.

Q. Well, now, the day on which Mr. Moore was hurt—do you remember the month that was?

A. I don't remember the month.

Q. Well, the day on which you took your pipes out, 3 and 4 inch pipes—do you know what month it was in?

A. It was in October.

Q. What time in October?

A. Well, I don't remember. I didn't pay any attention to it. I had to be all around, so I didn't pay any attention to it.

Q. Well, I understand that. Well, now, there was a 16 inch in diameter pipe here, you say?

A. Yes, sir.

Q. And one here?

A. Yes, sir.

Q. Do you know when they were taken out?

A. Well, we was going to take them out—when I had them disconnected. I had to take the nuts and the bolts. That is all I had to do. I left it to the other gang to take them out.

Q. Did you see Mr. Moore there that day?

A. I seen him around there, but I didn't pay any attention to it, you know.

Q. Did you see him? You know Mr. Moore?

A. I know him.

Q. Did you know him before this accident happened?

A. I knew him around the work, yes sir. I knew who he was.

Q. Did you know him to speak to?

A. Yes, sir. I knew who he was.

Q. Did you see him on that morning, that day?

A. I didn't pay any attention to it.

Q. You didn't pay any attention to who you saw there, did you?

A. No, sir.

Q. These 3 and 4 inch pipes, on what day were they taken out?

A. I can't exactly remember.

Q. Were they taken out before or after the 16 inch pipes were taken out?

A. They were taken out before.

Q. How many days before?

A. Well, I can't remember.

Q. About how many, would you say?

A. Maybe 2, 3 or 4 days.

Q. Two or three days?

A. Yes.

Q. And did you see them trying to take out these pipes—these 16 inch in diameter pipes on the day on which Mr. Moore was injured?

A. Well, I can't remember. I had to go and disconnect it and have it ready. I suppose he was around on the work. He always had to take them away, the dirt—

Q. Did you see Mr. Moore there that day?

A. I can't remember seeing him. I didn't pay any attention to see him. I was attending to my work.

Q. What was the height of the gravel in this coffer-dam on the day on which they were taking out these 16 inch in diameter pipes?

A. The height of the gravel?

Q. Yes.

A. Well, there was some gravel around one pipe, and then there was water around one of them.

Q. Did you see the men shoveling gravel in this coffer-dam on that day?

A. I can't remember. That was not in my line at all. They had to have them ready for me when I got

over, so I don't remember.

Q. You didn't see what was done there until after they got ready for you?

A. No.

Q. Do you know what time of day they did get ready for you?

A. No. I don't remember.

Q. It is too long ago for you to remember?

A. Yes, sir.

Q. Would you say that during the month of October water would come up all along this coffer-dam here, when it was high?

A. Sometimes.

Q. And then sometime in the day there would be no water there at all?

A. It would go down.

Q. It would go down and come up?

A. Yes, sir.

Q. Now, did you see any logs projecting out from the bank of the river towards this coffer-dam?

A. Yes, sir, I did.

Q. Whereabouts?

A. Over here.

Q. And where else?

A. I don't remember any other place.

Q. That is the only place you noticed?

A. Yes, sir. There is all kinds of old lumber sticking out on the bank all over.

Q. Would you say that—did you notice on the day on which they took out, or were taking out, these 16 inch pipes whether there was any water here or not?

A. I don't remember.

Q. You don't remember that?

A. No, sir.

Q. There might have been water there, for all you know?

A. Well, there was water some places along here. And there was gravel too. I didn't pay any attention to that. I didn't have time enough to stop and think about that.

Q. You never paid any attention. Did you ever have any occasion to go over on the bank of the river at all?

A. I walked on old lumber around.

Q. Where did you walk from, from the coffer-dam?

A. On just this walk.

Q. From the float?

A. Yes, sir.

Q. Did you walk from the coffer-dam over to the bank of the river at any time?

A. Yes.

Q. Whereabouts?

A. Over here. Here was some gravel. Here was some boards.

Q. That would overflow with water sometimes, would it?

A. Yes, sir.

Q. Then you walked from near the middle of the coffer-dam on lumber over on to the bank of the river?

A. Walked over here some place.

Q. Well, over down here?

A. Yes.

Q. Down near the south pier. Well, now, about how near the pier was this lumber piled in here that you say you walked on?

A. Oh, I can't remember. It was not piled. It was thrown all around.

Q. And how often did you do that?

A. Only when I had to go over there and do something.

Q. Well, when you did that, there must have been water then along in front of the coffer-dam.

A. There was water around here.

Q. But if it had been dry land, you would have walked on the land, wouldn't you?

A. Yes, sir.

Q. Now, do you know, you say you don't know, the condition in front of the East part of the coffer-dam on the day on which Mr. Moore got hurt, do you?

A. No, sir.

Q. You don't know whether there was any lumber there, or whether there was any staging there or not, do you?

A. Well, I know it was old lumber in around. There was no staging at all.

Q. But you stated you didn't look.

A. Well, I didn't look. I know there was old lumber.

Q. But you didn't look on that day, did you?

A. I am sure I looked when I walked on there.

Q. Well, did you walk on that day over on to the

bank of the river, when he was hurt?

A. Yes, I was there in the morning, working around. I had some gravel and stuff in the way one pipe, and then the other was water.

Q. I mean on the day Mr. Moore was hurt.

A. I don't remember that day, at all.

Q. You don't remember that day at all?

A. No.

Q. Then you don't remember whether you walked on the shore on the day on which he was hurt, or not, do you?

A. Well, I was over there. It is kind of hard to remember.

Q. Well, you don't remember whether you did or not?

A. I didn't pay any attention to the date. I walked and things like that.

Q. That is what I want to know. That is what we are trying to get at. On the day on which Mr. Moore—I asked you that question. Mr. Nelson, where were you on the 10th day of December, 1912?

A. I think I was in southern Oregon.

Q. Where?

A. Away down in Southern Oregon.

Q. Southern part of the State?

A. Yes, sir.

Q. When did you work for this company last?

A. I worked all winter.

Q. All winter?

A. Yes, sir.

Q. Under Mr. Alexander?

A. No.

Q. Whom?

A. Mr. Willard.

Q. And he worked for Mr. Alexander, for the defendant company?

A. No, he was in another place. Mr. Alexander was not in Portland.

Q. I know, but it was for the same company.

A. Yes.

Q. Are you in their employ now?

A. No.

Q. How long have you been working for them?

A. I have been working about four years.

Q. Steady?

A. Yes, sir.

Q. And whenever they have any work to do, you generally work for them don't you?

A. Yes, sir.

Q. Are you engaged to do any work for them in the future?

A. I might.

Q. Well, but not you might. Are you engaged? Are you going to do any work somewhere, and are you going to work for them?

A. No. Not that I know of.

Mr. SENN: I object to this, taking up the time of the Court.

Q. What?

A. No.

Excused.

GEORGE F. CLARK, a witness called on behalf

of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SENN:

Mr. Clark, where do you live?

A. I live in Brantwood Addition, Portland, Oregon.

Q. How long have you lived there?

A. About three years.

Q. Were you working for the Union Bridge & Construction Company on the Broadway Bridge October 2, 1911, about the time Mr. Moore was hurt?

A. Yes, sir.

Q. What was your business?

A. I was hoisting engineer.

Q. Hoisting engineer. As hoisting engineer, what was your duty?

A. Well, I ran the derricks.

Q. What is that?

A. Derricks—handled derricks, different derricks, and being on barges and on shore.

Q. Were you familiar with the conditions down there about the time Mr. Moore was injured, on pier 7 particularly?

A. Well, I couldn't say that I was especially on that date.

Q. Do you know the position of the float there, and the barges, and the stairway?

A. Well, I know the position of the stairway and float, but the barges, I couldn't say as to that.

Q. State whether or not the float was anchored against the coffer-dam.

A. Well, at that special day I couldn't state if it was; but then it was supposed to be there, because I had occasion to use that float about twice a day.

Q. How did you get across the river?

A. By boats.

Q. And would you use the float for that purpose?

A. We would have to come down on the float in order to get on the boat—if you were at that point.

Q. Was there any ladder running from the float up to the top of the pier?

A. Yes, sir.

Q. Who used that ladder?

A. Why, it was put there for the civil engineers to use, as I understand it. There was nobody else had any occasion to use it.

Q. Do you know of any staging having been built from the coffer-dam to the east bank of the river?

A. Why, not anything of a permanent nature, I don't know of anythink ever having been put there. It might have been, but I would not have known it.

Q. Did you ever see any there?

A. No, I never saw any permanent staging there.

Q. Did you have anything to do with getting these pipes out?

A. No, nothing at all to do with getting those pipes out.

Q. On the west side of this coffer-dam, pier 7, did you ever have any trouble getting a scow stuck there?

A. Well, we have at times when the water was

low, the nose of a scow would set in—say this is the opening between the two piers, we would pull a scow in—

Mr. GILTNER: I object to this testimony unless it is confined within some reasonable time of the happening of this accident. I don't think it is competent testimony.

COURT: I will overrule the objection.

Mr. GILTNER: Save an exception.

Q. I wish you would just step in front of the jury, Mr. Clark. Referring to Model 1, in Defendant's Exhibit 1, which appears to be a down view of pier No. 7 and the coffer-dam, showing the shore line, and the float, and the stairway, and the letter G appearing to show ground, state whether or not at times during October and November, 1911, there was ground from the coffer-dam to the bank.

Objected to as incompetent, irrelevant and immaterial, and not confined to the time within which this accident happened.

COURT: I understand the accident happened on the 2nd day of October, 1911?

Mr. GILTNER: Yes, sir. And it is very easy for him to ask him that question. If he knows, he can testify to it.

COURT: It ought to be confined to about that time.

Q. On or about October 2, 1911, at the time you were taking these pipes out, and at the time Mr. Moore was injured?

A. I couldn't say on that day. I had occasion to

use that quite often, I would have occasion to go on this work, but on that especial day, I don't know. I remember of Tom getting hurt, but I don't know; but at this special date, of course, I would hate to say. I was on and off that building and across that float, say going on and off that float an average of twice a day.

Q. Did you ever see any dry land from the bank out to the coffer-dam?

A. Yes, I have seen dry land, so it was possible to step off from the cribbing to the coffer-dam to the bank.

Q. There has been some testimony here, Mr. Clark, about a log projecting out. Where was that log projecting out?

A. I cannot say exactly what the position of that log was. There was a log sticking out of the bank, as I remember, and there were times when we were working there that it was necessary, you know, for a man to walk around this bank. It was irregular shape. And along about where the south pedestal is there was a log projecting out from this bank, that stuck up some distance up in the air, and towards the pier; but then I couldn't exactly state the location.

Q. When you refer to the south pedestal, do you refer to B?

A. Yes, sir.

Q. That would be the one that is up opposite the float?

A. Yes, up opposite the float.

Cross Examination.

Questions by Mr. GILTNER:

Then, Mr. Clarke, on the 2nd day of October, 1911, you are not prepared to state what the condition of the water was in front of this east part of the coffer-dam, are you?

A. Well, no, not accurately; not at that particular date, I wouldn't state.

Q. The water would rise and fall there, would it not?

A. It would fall and rise all along the river, yes, sir.

Q. Were you there on the 2nd day of October? Do you remember whether you were there on the 2nd day of October?

A. I wouldn't state specifically that I was there on that date. My work was not especially around that pier any more than it would be around others; and I was first one place and then another.

Q. What were you—a donkey engineer?

A. Yes, sir.

Q. And you had charge of a barge, or donkey engine on a barge?

A. I was on no special engine. I would be first on one and then on another; and I have worked around this pier.

Q. Did you have anything to do with pulling these pipes out of here?

A. No, I didn't have anything to do with taking those pipes out.

Q. You don't know whether you were there on

the 2nd day of October or not? You wouldn't swear positively?

A. No, I would not swear positively whether I was there on that date or not.

Q. Now, another thing, Mr. Clark, this float here—this rope sometimes would be tied closer, and this float would be nearer? It swung from and towards the coffer-dam, did it not?

A. It might have been some nearer up and down; I couldn't state.

Q. It was tied with a rope?

A. Well, the end would extend out in the river; it swung around.

Q. Was there ever any time when the float was further away from the coffer-dam than others? Did you ever notice that?

A. It is possible there might have been, further away than others.

Q. Then, if it was further away from the coffer-dam, why, there would be a little slack in the rope, wouldn't there—have to be?

A. Oh, yes, there would be a little slack in the rope.

Q. Do you know the length of the rope?

A. No, I don't. I never paid much attention to anything like that.

Excused.

Recess taken until 2 P. M.

W. J. CHALFAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SENN:

Mr. Chalfan, where are you working at the present time?

A. No place, sir.

Q. Where have you been working in the past?

A. Seattle, lately.

Q. And for what company?

A. International Contract Company.

Q. Did you ever work for the Union Bridge Company?

A. Yes, sir.

Q. Did you work there at the time Mr. Moore, the plaintiff, was hurt?

A. I did.

Q. What kind of work were you doing?

A. We were tearing off, cleaning up, principally around the pier on the East side at the time.

Q. You were cleaning up at the time he was hurt?

A. Yes.

Q. How many men did you have there?

A. Well, I don't know—some five or six; possibly more.

Q. Were you the boss of the men?

A. Yes, sir.

Q. How long had you been working there when Mr. Moore was hurt?

A. Working at this place?

Q. Yes.

A. Well, I disremember now. It might have been one day; maybe two; maybe more.

Q. What had you done there before?

A. Well, just nearly everything that was to be done on the bridge.

Q. Had you scaled down the forms from off the piers?

A. Well, that had been done ahead of us.

Q. What were you doing there at the time of the accident particularly?

A. Well, we were tearing out some of the forms from under the water, and tearing out the coffer-dam, taking out the supply-shaft and man-shaft.

Q. I will hand you Defendant's Exhibit 1, and I wish you would step down before the jury, Mr. Chalfan, and if you can step back here so the jury can see. Now, referring to the word "Float" there, what was that at the time?

A. Well, it was a float.

Q. Where was it anchored? What position did it have?

A. Well, it was anchored alongside of the pier, on the down stream side.

Q. Was it anchored to the coffer-dam?

A. Yes.

Q. How would you get onto this float?

A. Come down the steps.

Q. When you refer to the coffer-dam, what do you mean?

A. Well, this is the coffer-dam, that is outside.

Q. You mean the outside casing?

A. Yes, sir.

Q. Was it your purpose to tear this casing out,

too?

A. Yes, sir.

Q. How deep in the ground was that casing sunk?

A. I don't know. I had nothing to do with that.

Q. Was it below the water level?

A. At that time?

Q. The bed of the river, yes.

A. Well, sometimes it was below the water, and sometimes the water was below it.

Q. I mean, how deep into the ground was this coffer-dam?

A. I don't know.

Q. It was down into the water, anyway?

A. Yes.

Q. Now, these piers stood up about how high above the coffer-dam?

A. Well, I couldn't tell you. Possibly eighteen or twenty feet—something of that kind.

Q. Were there originally forms around them?

A. Yes, sir.

Q. How were those forms built, will you explain to the jury—the forms of these piers?

A. Well, they put on timbers on the outside, I should say 66 or something like that, and then nailed the boards to those.

Q. From the inside?

A. Yes. So as to have smooth surface from the outside.

Q. So as to have a smooth surface from the outside?

A. Yes.

Q. Then when you had the form built, what did you do?

A. Filled it up with concrete.

Q. You pour the cement in from the inside?

A. Yes.

Q. Are there any nails driven from the outside into the cement?

A. No, sir.

Q. The nails are all driven from the inside out, and the studding, or the timbers that hold the form are on the outside?

A. Yes.

Q. That is the crib work?

A. Yes, sir.

Q. Now, in tearing that down at the time of the accident, what had happened to the form around the piers?

A. Well, they had taken it down. They had jerked it down away down into here.

Q. Down to the water line ?

A. Yes.

Q. You had it down to the water line?

A. Yes, sir.

Q. What was done with the old form stuff and lumber?

A. It was throwed back up on the shore.

Q. How did you get it around there on the bank?

A. Well, we would lots of times just throw it in the water here, and they would pull it out on the bank, or we would throw it out there, and take it on up.

Q. Use pike poles?

A. Yes, we used a pike-pole.

Q. How did you scale it off the form of the pier?

A. Well, I never pulled any off, you see. What we got was here. We just pulled it out with the derrick from underneath.

Q. That is this coffer-dam?

A. Yes, and some of the forms, too, from underneath the water.

Q. From underneath. Where were these pipes you were going to take out?

A. One in here some place, and one there, and one about there.

Q. What had those pipes been used for?

A. Those two were supply-shafts. Put the concrete into the bottom, and rocks in the bottom. The other was a man-shaft.

Q. Where the men went down through the shaft?

A. Yes.

Q. And it was those you were going to take out?

A. Yes.

Q. At the time of this accident, Mr. Chalfan, were you engaged in tearing out this coffer-dam, and the forms, and the pipes, and cleaning there?

A. Yes, sir.

Mr. GILTNER: Now, if the court please, I object to leading this witness. He can ask him what he was doing, and then he may make a statement of what he was doing.

COURT: I think you better let him state.

Q. Do you know the length of the coffer-dam?

A. No, sir.

Q. Do you know the width of it?

A. No, sir.

Q. At the time of this accident, Mr. Chalfan, did you have a barge along the line marked "D", or hoisting derrick, or did you have anything along there?

Mr. GILTNER: I object to his leading this witness in that way. He can state what was there and how they were doing it. I think that is the proper way of conducting the trial, without leading the witness.

COURT: This witness knows whether or not they were down there. Let him answer that question.

Q. Do you know whether there was anything along the line "D" there?

A. We had our derricks along in here.

Q. What was that used for?

A. It was to pull off these forms, and this coffer-dam out of here, and take out the pipes and the shafts.

Q. What was this derrick composed of, and how would you fasten it. Just explain to the jury.

A. Well, there was a scow. There was a boom.

Q. A boom that projected out?

A. Yes, sir.

Q. And how did you get out to attach onto the forms?

A. Well, we would get out from the coffer-dam, attach from there.

Q. Did anything run from the boom-pole down here?

A. There was a line, a cable.

Q. And what was on the end of the cable?

A. I disremember. I couldn't say.

Q. Did you ever have any trouble along the line marked "D"? Do you know what the depth of the water was along the line marked "D"?

A. There wasn't much water here. At times it would be more; at times it would be less; and the water filled in. They throwed dirt over from here, and dirt in here, until it run over on the inside of the crib, and got dirt on the inside around this shaft. And we was trying to get that out.

Q. Do you know how deep this pier was sunk?

A. No, sir.

Q. What was done with the dirt that was taken out of those piers?

A. It was thrown in here and in here.

Q. That was when they excavated it was thrown in here?

A. Yes, sir.

Q. On the day of the accident, was Mr. Moore working for you?

A. Yes, sir.

Q. Just explain to the jury what you know about the accident and the facts.

A. All that I knew, I saw him, and he said he stepped on a nail.

Q. I mean prior to that time, how did he happen to get over here? Just explain the whole proceeding.

A. Well, I don't know how he got over. He was sitting over there quite a while, and I was over in that way, and I just asked him, I says, "What is the matter, Tom?" He says, "I ran a nail in my foot."

Q. Where was that conversation had?

A. This is the float.

Q. This is the float, the piers, and here is the bank.

A. Well, I was over in here.

Q. Where was he sitting?

A. He was sitting along in here some place.

Q. What on?

A. On the ground, I think?

Mr. GILTNER: Now, if the Court please, I don't want to be captious, but the witness never testified he was sitting anywhere. I don't think that is a proper way of trying a case. It is very leading and suggestive.

A. He might have been sitting on a board. He might have been sitting on the ground.

Q. Where was the board or the ground?

A. Right in here. Right along here somewheres —I am not sure.

Q. I wish you would make a mark with a pencil about the place.

A. Somewheres here. It is about in here some where, as well as I remember. I haven't been there since.

COURT: What is that mark?

Mr. SENN: "X" near the word "Plan," to the right of the word "Plan."

Q. How did you first happen to see him there?

A. Well, I happened to be in here.

Q. Were you near the float?

A. I was in here.

Q. How far is that from the float?

A. Well, I might possibly have been six or eight or ten feet from the float.

Q. Were you on the bank or on the stairs?

A. I was on the shore.

Q. Now, what transpired?

A. I just asked him what was the matter, and he said he stuck a nail in his foot. I asked him whereabouts. He said "Right here."

Q. What did he point to?

A. He just put his thumb over like that. I didn't pay any more attention. I says, "Did it hurt pretty bad?" He says "Yes," or something to that effect. I told him to go up to the office. I can remember telling him to go to the office and get something done for it. We always do.

Q. Well, now, when he pointed, what did he point to?

A. Well, he pointed to the board.

Q. Where was the board?

A. All over the shore.

Q. Was this board on the bank, or on the cofferdam, or in the staging?

A. It was on the bank, on the shore.

Q. What was he doing with his shoe?

A. He wasn't doing nothing with his shoe.

Q. Did he have the shoe off or was it on?

A. It was off at the time I saw him.

Q. Referring to the letter "A", and to Defendant's Exhibit 1, which purports to be a shore line marked in blue, I will ask you whether there was any scaf-

folding between this shore line and the bank—staging?

A. No, sir, we had no staging in there.

Q. How long had Mr. Moore been sitting on the shore there before you walked over to him?

A. I couldn't tell you that.

Q. Was it a minute or two minutes?

A. Oh, it might possibly have been two minutes; maybe more; maybe less.

Q. How many boards were lying on the shore there, do you know?

A. I couldn't tell you that.

Q. Were there five hundred or two hundred?

A. There was quite a number of them, lots of them torn off, lying around there.

Q. How long were those boards?

A. They varied in length from say possibly ten feet to maybe fourteen, something like that.

Q. After the accident, did you keep on working there?

A. I did, yes, sir.

Q. Had you ever ordered, or had you ever yourself built any staging or scaffolding to walk from the coffer-dam?

A. No, sir.

Q. Do you know which way Mr. Moore took to go across the river after the accident?

A. I couldn't tell you that.

Q. You went about your work and he went off?

A. Yes, sir.

Cross Examination.

Questions by Mr. GILTNER:

Q. Where were you when you told him to go to the office?

A. I was on the shore, on the East side.

Q. On the shore?

A. Yes, sir.

Q. You are positive of that?

A. Yes, sir.

Q. Do you remember testifying in this case on or about the 10th day of December, 1912?

A. I do.

Q. Do you remember testifying at that time that you went back onto the barge, and Tom Moore came over there, and you asked him how his foot was, and he said that his foot pained him, and you told him—he passed you on the barge, and you told him to go to the office? Do you remember testifying to that?

A. No, sir.

Q. Do you deny that you testified to that?

A. I do not.

Q. You do not?

A. I do not.

Q. You do deny that?

A. No, sir.

Q. I will ask you if you didn't, in the presence of Judge Bean and Mr. Senn and myself and the jury, whose names I do not recollect, make this statement: "Where was this barge? A. It was sitting on the outside piers. Q. Just on the other side of the coffer-dam from you? A. Yes, sir. Then I passed Mr.

Moore sitting on the shore, with his shoe off. I says, 'What is the matter with you, Tom?' He says he stuck a nail in it, so I went on over. Then I went across to the barge, and I think I unhitched, if I remember right. I done the unhitching while the other boys were getting ready to get the supply shaft out. He came out on the end of the barge where I was and said his foot pained pretty bad. I said for him to go on over to the office and have it attended to." Do you deny that you made that statement at that time?

A. I do not.

Q. What?

A. I didn't deny it, no, sir.

Q. Well, you did make that, didn't you?

A. Possibly I did.

Q. Then now when you state that you was on the bank when you told him to go to the office, you are mistaken, are you not, or were you on the barge? What is your answer to that?

A. Well, it has been some time ago. I disremember just exactly.

Q. Well, it wasn't a very long time ago.

Mr. SENN: Your Honor, I would like to have counsel read the rest of that testimony. The conversation he had with Mr. Moore on the bank.

Mr. GILTNER: I am not asking him about that.

Q. You testified today that you didn't see Mr. Moore go off the coffer-dam for the board, to take it over to the coffer-dam, did you?

A. I don't remember seeing him, or whether I

saw him or not.

Q. Didn't you so state today, that you didn't see him go off for the board?

A. I disremember whether I saw him or not.

Mr. SENN: The witness never testified to that at all.

Mr. GILTNER: Your Honor, we will go through his testimony. He stated he didn't see him come off the coffer-dam.

COURT: The jury will remember his testimony.

Q. Is it not a fact that at the other time when you testified in this case, at the same time and place, you stated that he came off the coffer-dam, and he came by you, or he came over on the float—he came around by you? I will get the testimony and read it to you, so that we will know. Here it is: "Didn't you just state to this jury you didn't know how he got to this pier—to this bank? A. Not when carrying the board, the second time. 'Q. That was the first time. Didn't you make the statement you didn't know how he got from this pier over there—you didn't know? Didn't you make that statement? A. Well, he passed me here, going here." (Meaning that you were on the bank at the time). "Q. Didn't you make that statement to this jury? You didn't know how he got from that pier over on the bank there? A. I might possibly. Q. Now you have changed your testimony and recall now that you do know, don't you? Mr. Senn: I don't think the witness testified to that at all. Mr. Spencer: I don't think he has changed his testimony. Q. That is a question for the jury.

Now, isn't it a fact that Mr. Moore was on this coffer-dam here?" Wait till I get the original question here. You answered that?

Mr. GILTNER: I don't want to take the time of the court, but I will get it and introduce it in rebuttal.

Q. Did you not state at that time and place, in the presence of the people whose names I have mentioned, that Mr. Moore came off the coffer-dam after you came off, and he went by the way of the float, and came around by you while you were on the bank of the river, and he stopped and asked you—or words to that effect—what to do, and you told him to go and get a board and take it over onto the coffer-dam?

A. I disremember just what I did say.

Q. Well, when is your recollection the best—now or when you testified the last time?

COURT: Answer the question, if you can.

A. Well, I disremember just how it was before, what I did say before.

Q. What is that?

A. I say I disremember just the words we did use before.

Q. You say you gave him orders to get a board?

A. Yes, sir.

Q. What was that for?

A. That was to get on the scow, where it was got out, floated out.

Q. What was that?

A. To get onto the scow.

Q. What was this board to be used for?

A. A gang-plank.

Q. A gang-plank for what?

A. Getting on the scow.

Q. Did you not testify at the other time, at the same time and place, during the trial of this case, that you ordered him to get that board for the purpose of putting over on the edges of this coffer-dam, so he would not get his feet wet while reaching down to the bolts in these pipes that went down into the coffer-dam?

A. No, sir.

Mr. SENN: Your Honor, we object to that question as not a proper question to ask this witness. If counsel has that testimony, let him introduce it, and let him read the statement to the witness. The witness never made any such statement in the other trial, and this is all imagination on the part of counsel. He has looked through his evidence here and couldn't find it. I think he ought to be required to read that.

Mr. GILTNER: That is not a fair statement at this time. I am repeating it as near as I can.

COURT: There seems to be a dispute about that. Mr. Senn says he didn't testify to that. I think you better get the record. You better refer to the testimony, and read that to the witness.

Mr. GILTNER: It will take a little time for me to get it. I will ask him a few more questions first.

COURT: Very well.

Q. What time did you go to work there that morning, Mr. Chalfan?

A. I disremember what time I went to work there at that point.

Q. What?

A. I disremember what time we went to work at that point that morning.

Q. Did you go over in the boat with Mr. Moore?

A. I didn't go over in no boat at all.

Q. Was Mr. Moore on the coffer-dam when you got there?

A. I disremember, sir.

Q. Did you see the men working on the coffer-dam when you got there?

A. No, sir.

Q. Didn't you see the men shoveling gravel from around these pipes at the coffer-dam?

A. When I got there?

Q. While you were working there?

A. When I first got there, there was nobody working there.

Q. Well, after you got there, didn't you see the men shoveling the gravel away from these pipes that were in the coffer-dam?

A. Yes, sir.

Q. And Mr. Moore was on the coffer-dam shoveling it away from them, was he not?

A. He couldn't reach it from the coffer-dam.

Q. What?

A. He couldn't reach it from the coffer-dam.

Q. I say, he was in there shoveling gravel with the other men, was he not?

COURT: Answer the question whether he was or not.

Q. If you remember.

A. That I disremember, whether he was there, or hitching on.

Q. You wouldn't deny but what he was, would you?

A. Well, I disremember whether he was or not—what he was doing exactly at that time when I got there.

Q. When did you first go to work there to strip these pieces off the coffer-dam, these side pieces here? This whole thing here is the coffer-dam, isn't it? (Referring to model).

A. Yes, sir.

Q. Now, these pieces on the sides were the pieces that you were taking off, were they, you claim?

A. Taking off some of them, yes, sir. That was not all we was taking off, though.

Q. You were trying to get those pipes out there, were you not?

A. Yes, sir.

Q. And you were shoveling—the men were shoveling gravel away from the sides of these pipes so they could get at the bolts, just as the engineer testified to, weren't they?

A. Some of them were, yes, sir.

Q. Now, what I want you to tell this jury is, what time you went to work on the morning of the 2nd of October.

A. I couldn't tell you, sir.

Q. Was it seven o'clock, or half past seven, or eight?

A. I disremember now what time I did go to

work. 7:30 was the time we most generally went to work. I never lost no time—was there nearly always on time.

Q. Do you remember of ever having stripped any of these pieces off this coffer-dam before the day of this accident?

A. I disremember whether we had taken any off before or not.

Q. Isn't it a fact, Mr. Chalfan, that the first day that you had anything to do with taking them off was the morning that Mr. Moore was injured?

A. I couldn't tell you now whether that was the first day or not. We might have been working there several different times.

Q. Isn't it a fact, Mr. Chalfan, that you hadn't taken any of these off there that day at the time—up to the time that Mr. Moore was hurt?

A. I disremember whether we had pulled any of that stuff off or not there around the coffer-dam.

Q. Did you not state during the trial of this case, in the presence of the parties whom I have already mentioned, that you had pulled some of these off prior to the time that Tom Moore was injured?

A. I say we might have pulled some of them off.

Q. What?

A. I say we might have pulled some of them off.

Q. I am asking you if you didn't state that you did before this, at that other trial.

Mr. SENN: Objected to. The testimony is the best evidence.

COURT: Do you remember what you stated at

the former trial?

A. I do not.

COURT: He says he doesn't remember.

Mr. GILTNER: That is all right. That is proper.

Q. Now, do you mean to tell this jury that you were pulling these boards off this coffer-dam while these men were in here shoveling this gravel away from these pipes on the morning that Tom Moore was injured, with a donkey-engine and chains?

A. Yes, sir, we pulled them any time.

Q. Wouldn't it be highly dangerous to do a thing of that kind?

A. No, sir, it would not.

Q. With these men working in this coffer-dam, with a big chain to pull these boards off the side?

A. It wouldn't be dangerous.

Q. It would not?

A. No, sir, it would not; not to my estimation, it wouldn't be dangerous.

Q. Had you made a pull that morning before Tom Moore was injured? Had you made any pull at all to pull these boards off before Moore was injured with the donkey-engine?

A. We make pulls right along with the donkey-engine, right along, it wouldn't stop.

Q. I ask you if you had made any pull that morning.

A. I guess we had. If we had been pulling—if we had worked there any length of time.

Q. You said you were on the shore over here, didn't you?

A. No, sir, I didn't say I was on the shore over there.

Q. Over here?

A. Yes. Over there from the shore. That is in the water there, I think, the way he has got it.

Q. Where were you—over here, then?

A. Up in there some place, yes, sir.

Q. How far—will you just indicate on here where you were with a letter "X"? This is supposed to be the bank going up, and this is supposed to be water here (On Plaintiff's Ex. A). Now, just indicate where you were standing.

A. This is supposed to be the bank here. Well, I was right along in here some place.

Q. Make a letter "X" there. (Witness does so).

Q. And I wish you would make a letter "C" over here where the scow was, with a donkey-engine, and where the engineer was.

A. I haven't got room.

Q. Well, make it approximately, about where it was.

A. It was off in here some place. The engineer would be away back in here.

Q. How far was he from the coffer-dam?

A. I couldn't tell you.

Q. How far was the barge from the coffer-dam?

A. I couldn't tell you.

Q. The barge that contained the donkey-engine?

A. I couldn't tell you that.

Q. What were you doing over here?

A. Giving him a signal.

COURT: How is that?

A. Giving signals to the engineer.

Q. Giving signals?

A. Yes, sir.

Q. What were you giving him a signal for?

A. To pull.

Q. Where did you have hold?

A. I couldn't tell you where I had then.

Q. Couldn't you more easily give him a signal from the coffer-dam than to get away over onto the bank here to give it to him?

A. No, sir.

Q. Why not?

A. Say we would be pulling in here, could I see from here?

Q. Yes, couldn't you?

A. No, sir.

Q. But you were pulling the boards off here? What board was you pulling off at that time?

A. I couldn't tell you, sir.

Q. Were you pulling one from the east side or the west side?

A. I couldn't tell you what I was pulling then. We had lots of stuff to pull there.

Q. But you were pulling boards off the coffer-dam, weren't you?

A. Possibly not off the coffer-dam at that time. Maybe from around the form.

Q. Well, this is the form, is it not?

A. It is not.

Q. What is that?

A. Coffe-dam.

Q. And that is the board that went around to make the coffer-dam, wasn't it? Now, where is the form you were pulling?

A. The forms we was pulling was under the water, around the pedestals.

Q. Down underneath the water?

A. Right at the edge of the water.

Q. Well, now, just show—just point here where you were making the pull, if you remember.

A. I couldn't tell you where we was pulling at that time.

Q. Were you pulling here at the north pier, the forms at the north pier?

A. I couldn't tell you.

Q. Well, if you were away over here, you must have been somewhere pulling some forms off the north pier or you wouldn't have been away over here, would you?

A. Not necessarily.

Q. Well, you wouldn't get away over here to give him a signal if you were pulling forms off the south pier, would you?

A. No, sir; and I wouldn't stand over there all day at that either.

Q. I didn't ask you that. By the way, did this donkey-engine make any noise while you were pulling there?

A. They most generally do.

Q. And at the time that you first saw Tom Moore, you were right where this cross was, and the donkey-

engine was making a pull on the forms?

A. At the time I first saw him?

Q. Yes.

A. No, sir, I was down in the shipyards the first time I saw him.

Q. But I mean the day of the accident. Don't get off that.

A. You asked me the first time I saw him.

Q. I mean the day of this accident. We are talking about this—not a month before.

A. That might not have been the first time I saw him.

COURT: Well, on the day of the accident.

Q. I am talking about the day of the accident.

A. Well, the first time I saw him on the day of the accident—I don't know where I was at that time. I might have seen him half-a-dozen times.

Q. Well, I mean when you were on the bank here, where this "X" was—were you making a pull then on the forms?

A. I couldn't tell you whether I was on the forms, coffer-dam, or what we was making a pull on.

Q. I didn't ask you whether you was on the forms. Now, is it not a fact that you could signal this donkey engineer better from over here on this part of the coffer-dam than if you got away over on the bank of the river here, away off out of sight from it, and out of the view, with this pedestal between you and him?

A. I didn't have that between he and I.

Q. What did you go onto this bank for?

A. To give a signal.

Q. Which way did you go to give that signal?
Which way did you get off this coffer-dam?

A. Get off on the float, and go around that way.

Q. And you were on the coffer-dam before, wasn't you?

A. Yes, sir, I was on the coffer-dam several times.

Q. And if you were going to make a pull, the chain must have been fastened to the forms that you were going to pull, were they not?

A. Yes, sir.

Q. Now, wouldn't it have been much easier for you, instead of going away from this float, and down here, and around on these steps, and around on the bank of the river, to have simply stepped over here and given him a signal?

A. No, sir, it wouldn't.

Q. It wouldn't?

A. No, sir.

Q. Mr. Chalfan, is it not a fact that at the time you gave Mr. Moore the order to go and get the boards, some boards, that you were standing on the west side of the coffer-dam, near the north pier?

A. I disremember where I was standing.

Q. Just wait a minute till I finish this question—and Mr. Tom Moore was standing by your side there shoveling gravel, and you ordered him, told him to go across there and get a board to put across here, so that they could reach down and not get wet when they had disconnected this pipe, or words to that effect? Did you not do that?

A. I disremember where I was standing when I told him to get a board.

Q. Did you not state, in your direct examination, that you were standing over here where this "X" was?

Mr. SENN: We object to that, your Honor, as incompetent, irrelevant and immaterial, as not the testimony on direct examination. He said he was standing there at the time he saw Mr. Moore on the bank with his shoe off.

A. That is the time I saw him.

Q. Do you remember where you were standing when you ordered him to get this board?

A. No, sir.

Q. Did you not, in the presence of Judge Bean and Miss Bell, the stenographer, and the jury duly impaneled at that time, myself and Mr. Senn, testify that he came around from the float here, and he came there, and you ordered him—that he came from here to ask you what to do, and you told him to go and get boards off here, and take them and put them over like this on this coffer-dam? Did you not make that statement at that time, or words to that effect?

Mr. SENN: We object, your Honor. The witness didn't make any such statement.

COURT: You better find it in the record.

Mr. GILTNER: "Direct examination." I will read it. It is also on cross-examination—it is better than it is here. This is direct examination by counsel for the defendant in this case:

"Q. I wish you would state to the jury just what

you know about that and how it happened. A. Well—
Q. And what work you were doing at the time. A. Well, we were pulling off the frames and getting ready to take out some of the—take out the main shaft and the supply shaft. Two sections was taken up and we was getting ready to take them out, and at the time I told Mr. Moore, he couldn't get across some way or other— Q. Across from where? A. From shore; I was standing on shore, and I told him to go over where the rest was and help them over there. He had been working over there; I disremember just what. Q. Where did you tell him to go? A. I told him to go over where the fellows were. COURT: Where were the boys? A. They were over on the coffer-dam. You see there was a gravel pile up where it had come out, in on the opposite side, and to the river side, where we could walk around there.” (now, that is on the west side of this coffer-dam). “It run in there quite a little bit. We were digging out around this supply shaft and the main shaft so they could get the plates out, about that much water, I should judge (indicating) and they would have to get their hands down in there; some had rubber boots; some didn't; plenty of rubber boots to put on. Mr. Moore was going over there and he couldn't get across, and I told him to get a board to get across. Pretty soon then I hollered to the engineer to give us a pull; we had come up and hitched on to the other side on the coffer-dam; we pulled on that. I got where I could see him and gave the signal. Q. Gave who a signal? A. The engineer on the barge.”

Q. Did you not make that statement at that time?

A. I disremember whether I said it just in them words or not.

Mr. GILTNER: I will get the other in the proper time.

Q. Mr. Chalfan, you say that Mr. Moore pointed to the nail that he stepped on?

A. He didn't point to no nail, no, sir.

Q. You asked him what he stepped on?

A. Yes, sir.

Q. Did you see the nail that he stepped on?

A. No, sir.

Q. Did you see the plank that he said he stepped on that contained the nail?

A. Well, I saw the planks laying there. He says, "I stepped on a nail in the plank."

Q. I say, did you see the plank that contained the nail that he stepped on?

A. I might have, I guess; there was plenty around there. I ought to have saw it.

Q. Did you see it?

A. I saw all the planks there was there.

Q. Do you mean to tell this jury there were no boards here on the east, just off the east end of this coffer-dam?

A. Off the east end?

Q. Yes, in the water here, off the east side of this coffer-dam.

A. We had loose boards in there.

Q. Loose, boards between the bank of the river and the coffer-dam. Do you mean to tell the jury

there wasn't anything there?

A. There might have been a loose board throwed across there, for them to walk on. I couldn't tell you about that. Sometimes there was.

Q. Did you look particularly to see whether there was?

A. No, sir, I didn't look particularly.

Q. For all you know there might have been some there?

A. They might have laid some across there, yes, sir.

Q. Is it not a fact that Tom Moore had gone across here and got a board, and came back and laid it on here, on this coffer-dam?

A. There wasn't none of these boards long enough for that.

Q. What?

A. There wasn't none of these boards of that kind long enough for that.

Q. I am not asking you that. Is it not a fact that Tom Moore had gone over and got a board, and laid it on the coffer-dam here, and the gravel that filled in on this edge, west edge of the coffer-dam and the gravel that was on the inside here, and then went over to get another, and when he went to get another he came back without it, and told you that he had stepped on a nail, or words to that effect?

A. He didn't come back and tell me he had stepped on a nail.

Q. Didn't he tell you that he had run a nail in his foot?

A. He told me he had run a nail in his foot up on the shore there when he was up there.

Q. You wasn't standing there when he told you?

A. No, sir.

Q. You are positive of that?

A. Yes, sir.

Q. Were you here on this coffer-dam at any time when Moore was there?

A. I might possibly have been.

Q. What?

A. I might possibly have been; more than likely I was, if he was around there any length of time.

Q. Now, you want the jury to understand it was over on the bank of the river that you gave him the orders to go to the office?

A. I don't know where I was right at the time. I remember telling him to go to the office.

Q. How far were you from Moore when you saw him sitting on the bank of the river with his shoe off?

A. Well, I couldn't tell you. I wasn't a great ways.

Q. How far?

A. When I first saw him, oh, I should judge maybe sixteen or eighteen feet—something like that. Maybe more, maybe less.

Q. You walked up to him?

A. I did. I passed right by him.

Q. And you asked him what was the matter?

A. Yes, sir.

Q. And he told you?

A. Yes, sir.

Q. Now, how did you get from the coffer-dam to the bank of the river?

A. I got around on the float.

Q. Who went first, you or he?

A. I couldn't tell you that.

Q. What?

A. I couldn't tell you that.

Q. What did he come over there for?

A. Come over there to ask me what to do.

Q. How did he get over there?

A. I couldn't tell you now.

Q. Did you not testify at the other examination that he passed you on the bank here?

A. He might have passed me there on the bank.

Q. But didn't you testify?

A. I disremember just how I did say.

Q. Well, do you remember now whether he did or not?

A. I tell you I disremember.

Q. What was the distance from the east board in the coffer-dam to where you were standing on the bank of the river?

A. How is that?

Q. What was the distance from where you were standing on the bank of the river to the east board in this coffer-dam?

A. I couldn't tell you that.

Q. Well, how many feet?

A. I couldn't tell you.

Q. Five feet?

A. Oh, it was more than that.

Q. Ten feet?

A. Oh, I should judge ten or fifteen feet.

Q. Ten or fifteen feet?

A. Yes, sir.

Q. Do you mean to tell this jury that Tom Moore came off this coffer-dam, around on this float, and around here, to ask you what to do, when he could have stood on the east, about ten feet from here, and asked you from the coffer-dam what to do—that he came away over there to ask you what to do, when he was about a distance from here to here from you?

A. Oh, no, I didn't say that.

Q. Ten feet, about?

A. You asked me about that coffer-dam—how far the coffer-dam was from me on the east side. You say now he was on the east side—that would make it about thirty feet more, wouldn't it?

Q. I mean over on the east side. If he had something to do, and he was working here when you left—he had something to do—he could have walked over on the east, and been about 10 feet from you, wouldn't he?

A. Yes; he could have waded it through there, too.

Q. He was about this distance from you? Do you mean to tell this jury Tom Moore got off on this float, and walked around here, when he could have been within ten feet of you, and asked you what to do, and you told him to go and get these boards from this point here? Answer that Yes or No.

A. How is that question?

Q. (Question read).

A. He would have walked around by the float to get to me anyway.

Q. What distance would that have been?

A. I couldn't tell you—possibly ten or fifteen feet.

Q. Well, I mean walking around on the float and around over here, what distance would that have been?

A. Well, it might have been five minutes killing time, you know—I couldn't tell you.

Q. Didn't you testify it was about thirty feet before, when you testified in this case?

Mr. SENN: We object, your Honor.

Mr. GILTNER: This is cross-examination, your Honor.

Q. What is it, Mr. Chalfan? Can't you tell this jury about what distance that was?

A. Well, I cannot tell you exactly. It has been quite awhile ago.

Q. What was the size of this pier? What was the length of it that way?

A. I couldn't tell you.

COURT: I don't think you need go into that.

Mr. GILTNER: I was trying to get an idea before the jury, to show them what distance he would have to go.

Q. You cannot tell that, can you?

A. I can't tell why he wouldn't halloo across, you say?

Q. Isn't it a fact he would have had to walk about forty or fifty feet to get around on the float, and go

over on the bank to ask you what he should do next?

A. Yes, sir, he would have.

Q. And he could have stood right on this corner here and asked you that?

A. Yes, but he wouldn't have.

Q. Wasn't Tom Moore an industrious and a good man, who worked for you there?

A. Sure he was. If he wasn't I would have canned him.

Q. What?

A. If he wasn't, I would have let him went.

Q. And he attended to his business, didn't he?

A. Yes, sir.

Q. You were working for the interests of the company, weren't you?

A. Yes, sir.

Q. Wouldn't you have canned a man when he could walk over here and be within ten feet of you and ask you what to do—canned him if he had walked fifty feet away around here to ask you?

A. I would have had to go to the office all the time for men if I had.

Mr. SENN: Objected to.

COURT: I think you have gone far enough for that.

Q. You would have had to be going to the office all the time for men, eh?

A. Yes.

Q. Do you know whether there were any boards from the coffer-dam—laid from the coffer-dam to the bank of the river?

A. I say there might have been boards laid across there.

Q. How many boards?

A. I couldn't tell you that.

Q. Do you know whether there was or not?

A. I say there might have been.

Q. I know, but I am asking of your knowledge; not what might have been.

A. There was no staging there. There might have been a loose board throwed in there. They might have throwed a loose board in there to get across, for all I know.

Q. I am not asking you what there might have been. I am asking you what you know.

COURT: He has already answered that. He said he didn't know; they might have thrown one across there.

Mr. GILTNER: I didn't hear that part of it—that he didn't know.

Q. This rope—this wire cable that comes down off this donkey—

A. What?

Q. This wire cable, whatever it is, that you used—attached to the drum of the donkey-engine there is a wire cable, isn't there?

A. Yes, sir.

Q. And that goes through a block up above, on a boom, doesn't it? That wire cable from the drum, up the side on a boom, and goes through a block up at the top, doesn't it?

A. Not through a block, no, sir.

Q. What does it go through—a sheave?

A. A sheave.

Q. Well, a sheave, then—I call it a block, you call it a sheave. It goes through a sheave, doesn't it?

A. Yes, sir.

Q. It drops down? That is called a fall, isn't it?

A. Yes, sir.

Q. Attached to that is what they call a sling, isn't there?

A. A chain.

Q. That is called a sling, isn't it?

A. No, sir.

Q. What is it?

A. It is a chain.

Q. Well, they call that a sling, don't they?

A. No, sir.

Q. All right; we will call it a chain. Then attached to the end of that chain are grab-hooks, aren't there?

A. One hook. Sometimes we put on a timber.

Q. Well, I know, but that is used for the purpose of getting hold of the timbers to pull away, isn't it—this grab-hook?

A. Not on a chain, no, sir.

Q. What do you do? Do you bore holes through these timbers to get hold of them, or what?

A. Take the chain off.

Q. Suppose in this case here, where did you have that chain? On what part of the coffer-dam, on the west side or the east side?

A. We wouldn't have no chain on the coffer-dam.

We couldn't get hold with the chain.

Q. You couldn't get hold of it?

A. No, sir, not with the chain.

Q. Well, then, what did you have hold of, and on which side did you have hold, to fasten this chain to before you gave the signal to them to pull?

A. I couldn't tell you.

COURT: He has already answered that he doesn't know where the hook was at the time.

A. I don't know where the hook had hold at the time being.

Q. Didn't you testify at the other trial that it was on the opposite side, as I have read the testimony here—it was on the opposite side from you where they were pulling, on the other side of the coffer-dam?

A. I disremember.

Q. Did you notice whether a man could setp off the coffer-dam here onto the dry land and walk over and get these planks?

A. At times he could, yes.

Q. Well, I mean the time that Tom Moore was hurt.

A. I disremember about that.

Q. Was there any dry land in there then?

A. I disremember whether the tide was up or down. It was owing to where the tide was.

Q. Well, if it had been dry land, instead of going off the coffer-dam away over there, you would have stepped off on the land and walked around here, wouldn't you?

A. Might not. Might have been over on that side.

Q. It would have been easier for you to do that, wouldn't it?

A. Not if I was on that side.

Q. The fact of the matter is there wasn't any dry land there at that time, was there, Mr. Chalfan?

A. There was land there, owing to the tide, you see.

Q. I mean at the time Tom went over to get the board?

A. I don't remember how the tide was at that time.

Q. You didn't notice particularly whether it was water or whether it was dry land, did you?

A. No.

Q. Now, who was standing with you when you walked up—was any one standing with you when you walked up to Mr. Moore when he was sitting on the bank of the river?

A. I don't think so.

Q. What?

A. I don't think so. I disremember whether there was anybody or not.

Q. You went up alone, didn't you?

A. Sir?

Q. You went up to him alone, didn't you?

A. Passed by. I think I was the first one up to him. I am not sure about that; might have been some of the other boys there—I disremember. I seen him there.

Q. You heard Mr. Hoffstatter testify, did you not, in this case before?

A. Yes, sir.

Q. You heard Mr. Hoffstatter testify that you and he were on the coffer-dam, did you not, when you saw Tom Moore sitting on the bank of the river?

A. I don't know what his testimony was.

Q. Well, didn't you hear him testify to that?

A. I disremember what he testified to.

Q. Isn't it a fact that he did testify to it?

COURT: He has answered that question. He said he didn't remember; that he disremembered what he did testify; and that ought to be the end of it.

Q. Then you have no recollection of Hoffstatter testifying to that?

A. No, sir, I have not.

Q. What?

A. No, sir, I have not.

Q. You were here during all the trial, and after Hoffstatter testified in the last case, were you not—at the last time we tried this case?

COURT: If you are going to impeach Hoffstatter, you better wait until he is called.

Mr. GILTNER: I want to show that he didn't deny it; that Hoffstatter testified in his presence, and that he was in here during the time.

COURT: I don't think that would be evidence in this case now.

Q. Is it not a fact that when you first saw Tom Moore sitting on the bank of the river, you said to Mr. Hoffstatter, while you and Mr. Hoffstatter were standing on the coffer-dam, "What is the matter with Tom Moore?"

A. I didn't say that as I remember of.

Q. Just a minute. And that then you and Mr. Hoffstatter walked off on the float and around over to where Moore was, and asked him what was the matter with him, or words to that effect?

Mr. SENN: We object to that, your Honor. There is no such testimony in the case.

COURT: If he is laying the foundation for impeachment now, that is a different question.

Q. Isn't that the fact? Said in the last trial in the presence of the parties I speak of?

A. The first time I saw Mr. Moore was where I told you.

Q. Answer that question Yes or No, and then you can explain.

A. That is the first time I saw him was where I told you.

Mr. GILTNER: Is that a sufficient answer to that? He doesn't answer Yes or No.

COURT: You can answer the question whether it was or not.

Q. (Question read).

A. I don't remember telling Mr. Hoffstatter anything about it.

Q. What was the distance that Mr. Moore was from the east board of the coffer-dam, where he was sitting on the bank of the river?

A. I couldn't tell you.

Q. Was it five feet or ten feet, or fifteen feet or twenty feet?

A. He was possibly a little further up on the shore than I was.

Q. Well, say about ten feet—twelve feet?

A. I told you how far I was about.

Q. Well, about twelve feet, then. Now, if you were on this coffer-dam, you could very easily have stood on the coffer-dam and asked him, being about ten feet away from here, to this man here, on the end here, and asked him what the matter was without going off of the coffer-dam over to him, couldn't you?

A. Sure I could have, yes, sir.

Q. And if you had been on the coffer-dam, you would have done that, wouldn't you?

A. I don't know. If I was on the sidewalk, and you got your leg cut off on the street, I think I would run out and see how you was.

Q. Well, that might be so, too.

A. Yes, something like that.

Q. What time in the day was it that this accident happened?

A. I disremember what time it was.

Q. Was it in the forenoon or the afternoon?

A. I think it was in the forenoon.

Q. How long had you been working there?

A. About five months.

Q. Oh, I mean on the day on which this accident happened.

Mr. SENN: We object to that, your Honor. He has gone over this half-a-dozen times.

Q. I mean on the day this accident happened, how long had you been working there that day?

A. I answered that once. I told you that once or twice, I think.

Q. You had been working an hour?

COURT: You may state about how long you had been working there that morning before the accident.

A. It might have been an hour; might have been longer.

Q. You don't know, do you?

A. No, sir.

Q. Where is this engineer that was pulling these—working there running the engine, the donkey-engine on the scow, where is he?

A. I couldn't tell you that.

Q. What was his name?

A. I only knew his first name—Earl.

Q. Well, what was his first name?

A. Earl, I told you.

Q. Earl who?

A. I told you I didn't know only his first name.

Q. Was he there that morning?

A. Yes, sir.

Q. Isn't it a fact, Mr. Chalfan, that there wasn't any scow there that morning? There wasn't any engineer there that morning, but it was the next day that you had the engineer and the scow there? Isn't that the fact?

A. No, sir, we had a scow there.

Q. That morning?

A. Yes, sir. If we hadn't, we wouldn't have been over there; couldn't have done nothing.

Q. What?

A. Couldn't have done nothing without a derrick scow. It was what we were there for.

Q. Couldn't have got these pipes out without it—couldn't shovel the gravel away from the pipes without the scow there?

A. Well, that is about the same thing as asking if the locomotive fell off the bridge the engineer and fireman wouldn't swim out to the locomotive—these men wouldn't swim out to that pipe.

Q. How did the bank run up from the edge of the water? Just indicate by your hand that way how it ran up, about how steep it was from the edge of the water.

A. Well, in one place it was pretty steep; on this end upstream. Then it wasn't so steep after you got down further.

Q. Towards the center here, over here? How was it there where these boards were piled?

A. It wasn't so very steep in there, and back towards the float.

Q. How far from the edge of the water were these boards piled there?

A. They were piled all over.

Q. I mean that were piled up in a pile—how far were they from the edge of the water? How far back from the edge of the water?

A. I couldn't tell you that. They were scattered all around.

Q. Did you not testify at the last examination

about two or three feet?

A. They might have been two or three feet. I say they were scattered all around.

Q. Well, I say, didn't you testify the last time, at the same time and place, it was about two or three feet? Do you remember whether you did or not?

A. I disremember.

Q. Well, that is all right. Just answer it. We will have no fight. Have you got anything at all to show, being a foreman, any memorandum book, any writing to show whether or not you were working on this coffer-dam on the first day of October, 1911?

A. I don't keep no records of that at all.

Q. You didn't keep any record?

A. No, sir.

Q. What day of the week, if you remember, was the 2nd day of October?

A. I disremember.

Q. What was the width of that float?

A. Which float is that?

Q. The float at the north of the pier—the north pier.

A. I couldn't tell you.

Q. How was the float anchored?

A. The way I remember it, it was anchored with a rope there.

Q. What to?

A. Well, to the coffer-dam, or something right in at the coffer-dam. I couldn't tell you just what it was anchored to.

Q. You say you have been working for the Inter-

national Bridge Company?

A. Yes, sir.

Q. When did you quit their employment?

A. On the 2nd.

Q. 2nd of what?

A. April.

Q. Who was the superintendent of you there?

A. Well, I disremember. I don't know his name.

COURT: Is that another bridge company?

A. Yes, sir.

Mr. SENN: Yes, your Honor. We object as irrelevant.

COURT: What has that to do with this case?

Mr. GILTNER: It might become material.

Q. Did Mr. Dawson work over there?

A. Sir?

Q. Did Mr. Dawson work for this International Bridge Company?

A. He did, yes, sir.

Q. Was he superintendent over you over there?

A. At that time?

Q. Yes.

A. No, sir.

Q. You worked there at the same time?

A. Sir?

Q. Did you and he work there at the same time?

A. We did, yes, before this.

Q. Do you remember when he quit working there, or is he still working?

Objected to as irrelevant.

COURT: That is immaterial. That is not cross-

examination.

Q. Have you talked about what you were about to testify to in this case, since you came over here, with anybody?

Objected to.

A. Sir?

Q. Have you talked with any one as to what you were going to testify to in this case since you came over here?

A. Since I came over here?

Q. Yes.

A. Yes, sir.

Q. Whom did you talk with?

A. Talked it over with Mr. Senn and Mr. Alexander.

Q. You went over all these details again, did you, of your testimony—went over all the testimony?

A. Well, I don't think we did, sir.

Q. Did you talk with Mr. Dawson about it?

A. I don't think I spoke to Mr. Dawson direct about it.

Q. What is that?

A. I don't think I spoke to Mr. Dawson direct about it at all.

Q. Did you talk in his presence about it?

A. Yes, sir.

Objected to.

Q. What was your answer?

COURT: He said Yes, sir.

Q. And was a man by the name of Hoffstatter there when you were talking it over?

A. Yes, sir.

Q. And you were going over the details again in this case, were you, of what happened there?

Mr. SENN: Your Honor, we object to that as not proper cross-examination, not material.

COURT: Do you want to impeach this witness now?

Mr. GILTNER: Trying to. I will do the best I can, yes.

Mr. SENN: Just a fishing expedition, your Honor.

COURT: Then you better ask him the question, and ask him what was said.

Q. Did you not state in your last examination, in answer to this question, as follows: "Do you know where he (Tom) was going to take that plank to? A. He was going in here. The tide had come in, was higher here. Q. He was going to put the planks in where they were working? A. Yes, sir." Did you not testify to that at that time, or words to that effect?

A. I don't think so, exactly like that. It may have been just like that.

Q. What?

A. I don't hardly think it was just like that. It may have been.

Q. Then the stenographer put it down wrong, did she?

COURT: He says he didn't think; it might have been.

Q. Do you deny you testified that way?

A. No, I don't deny it. It might have been just

that way.

Mr. GILTNER: Your Honor, to save calling the stenographer, I would like the Court to read this. She made this transcript for me.

COURT: You can read it. I suppose there is no denial that that is his testimony, Mr. Senn? You don't make any question but what that is his testimony?

Mr. SENN: No. He can read that to the jury, and introduce it afterwards.

Mr. GILTNER: I will read what he testified to before.

COURT: How much of that are you going to read?

Mr. GILTNER: I will read just about six lines.

COURT: Very well. Read it.

Mr. GILTNER: Testimony of Mr. Chalfan at the other trial of this case. The following questions were asked him: "Q. And he was over here, wasn't he? A. Yes, sir. Q. Do you know where he was going to take that plank to? A. He was going in here. The tide had come in, was higher here. Q. He was going to put the planks in where they were working? A. Yes, sir."

Q. Did you make a written report to this company of how this accident happened?

A. I disremember whether I did or not. Most generally had to sign—just sign for them is all.

Q. Did you not state at the other trial, in answer to the following question: "Did you make a report of this to the company?" "Well, I made out—I filled

out a slip just how it was”?

A. I most generally always had to fill out a slip like that.

Q. What?

A. We always had to fill out a slip like that when one of our men got hurt.

Q. Did you fill it out?

A. I guess I did. I signed it, and the other man filled it out.

Q. Did you have a copy of it?

A. No, sir.

Q. Whom did you give it to?

A. I didn't give it to nobody. All I done was sign it up there.

Q. Who got it from you—Mr. Alexander?

A. The timekeeper, was the man that was there.

Q. “Q. Did you make a written report? A. They wrote it out, and I read it and signed it. It was right.” Did you state that, or words to that effect?

A. That is the way it is. That is the way we have to do it.

Q. Do you know whether Tom Moore was working at that pier before that morning that he was hurt?

A. I don't know where he had been working before then.

Q. Don't you know that that was the first time he worked at that pier with you?

A. Sir?

Q. Don't you know that is the first time that Tom Moore worked at that pier with you?

A. I don't know whether he worked there before or not. He might have been with me. It was off and on, first one and then another. I couldn't say.

Q. Did you pull off any of these planks off the coffer-dam after the 2nd day of October?

A. I disremember whether we did or not.

Q. Did you pull off any before the 2nd day of October?

A. I disremember that.

Q. But you do know you pulled them on the 2nd day of October, don't you?

A. Might have been the 2nd; might have been the 10th. It was the day he was hurt. I disremember the date.

Q. Which way was this barge? Which way was the bow of this barge facing—north or south?

A. The bow?

Q. Yes.

A. The front of the barge, the end we was using the boom on, was facing this way.

Q. Facing north, down this way?

A. Well, it swung out in the river.

Q. This is the north pier, you see. This is the south.. Now, which way was the barge facing, north or south?

A. Well, it was facing up this way.

Q. That would be north—towards the north pier?

A. Yes, facing towards the north pier.

Q. Now, the donkey engineer would be facing the north, then, would he?

A. Yes, sir.

Q. How high up above the rail, this west rail of the coffer-dam, was the scow on which the donkey-engine was that day?

A. I couldn't tell you.

Q. How high—how near the top of this west rail of the coffer-dam was the water on the day on which this accident happened, on the morning on which the accident happened?

A. I couldn't tell you that. It was owing to the way the tide was.

Q. How high above the coffer-dam was the engineer when you gave him the signal, just before or after you saw Tom Moore sitting on the bank? Was he above this west board on the coffer-dam?

A. Yes, sir.

Q. How high was he?

A. I don't know how deep the scow was.

Q. Did the top of the scow extend up above this west board of the coffer-dam?

A. Yes, sir.

Q. Well, then, he must have been up above it, wasn't he?

A. He could have been, yes, sir, if he was on top of the scow.

Q. You don't know how high.

Excused.

FRANK M. HOFFSTATTER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SENN:

Mr. Hoffstatter, where do you live?

A. Seattle, Washington.

Q. And where have you lived in the past?

A. Seattle.

Q. Did you ever work for the Union Bridge & Construction Company?

A. Yes, sir.

Q. Are you working for that company now?

A. No, sir.

Q. Were you working for the company at the time Mr. Moore was hurt?

A. I was.

Q. Where were you working?

A. Over on the East side there, at the pier?

Q. That was known as Pier 7?

A. I think so.

Q. Who else was working there, do you know?

A. Well, I don't know them all. There were several fellows there. There was so many worked there off and on, that possibly it would be impossible for a man to be acquainted with all of them.

Q. Mr. Chalfan working there?

A. Yes, sir.

Q. Do you know anything about the float that was at the north end of the north pier that the men walked out upon?

A. Yes.

Q. I wish you would just step up here, Mr. Hoff-

statter, in front of the jury.

Mr. GILTNER: I wish he would speak a little louder so I can hear him.

Q. Referring to the word "Float," state whether or not it was abutting up against the pier?

A. Yes, sir.

COURT: Mr. Hoffstatter, speak out, so the jury can hear you and the counsel.

Q. Now, referring to "B" and "C"—that is these two piers here—did they set inside of the coffer-dam?

A. They did.

Q. This coffer-dam marked on one side with a "D", if I understand it correctly, ran clear around the piers?

A. Yes, sir.

Q. This form that held the concrete for the piers, did that set inside of the coffer-dam?

A. Yes, sir.

Q. About how far was the pier from the coffer-dam?

A. Well, I don't know. I think something like two feet. I am not positive.

Q. That is, from the red lines of "B" and "C" to the blue lines of the coffer-dam would be two or three feet?

A. Something like that. I am not positive. I never measured it.

Q. Now, on the morning of the accident what is the fact as to whether or not lumber had been torn off from these piers?

A. It had.

Q. How far down had it been torn off?

A. Right off this same pier.

Q. Yes.

A. It had been torn down practically to the water's edge.

Q. What was done with that lumber?

A. It was just thrown out, some piled up on the bank.

Q. How did you tear that off?

A. Pulled some right off with the engine and picked some of it off; wires screwed on, you know, wired on there; and some pulled off with bars.

Q. Any way to get it off?

A. Any way to get it off?

Q. Now, at the time of this accident, what were you doing around here?

A. Well, we was pulling off this 12x12—this coffer-dam stuff; also some of this stuff we could get. Most all of this stuff we had been pulling on it.

Q. You had to clear up the coffer-dam stuff and the stuff that was beneath the water's edge on these piers?

A. Yes, sir.

Q. And this coffer-dam, about how high above the water did it extend?

A. When it was first built?

Q. Well, about the time of the accident?

A. When the tide was in there was more—when the tide was out there was more in sight than when the tide was high. It would be right up to the taper of the coffer-dam sometimes.

Q. Do you know how high the tide is there?

A. No, sir.

Q. You don't know how many feet it is. Now, state whether or not from this coffer-dam to the bank at times there was land, or what was the fact?

Mr. GILTNER: I wish to object to that unless he confines himself to the day on which this accident happened.

COURT: We are asking about that. I presume he will confine himself to that.

Q. About the time that Mr. Moore was hurt?

Mr. GILTNER: I mean the day of the accident.

COURT: I overrule the objection.

A. I don't know, but this is the water line on here. There was stuff, you know, that come out of these things here, on each of these, that was dumped on both sides of this pier. Sometimes you could walk from the coffer-dam to the shore; other times you couldn't.

Q. It would depend on the tide?

A. Yes, sir.

Mr. GILTNER: I move to strike that out as not responsive to the question.

COURT: The motion is overruled.

Exception allowed.

Q. Do you know how deep these piers were sunk?

A. Something like 33 feet—35 feet—something like that.

Q. Do you know the diameter of them?

A. No, I do not.

Q. All the dirt that came out of there, what was

done with it?

A. Well, they had what they call blow-pipes, and some of them were blowed out further than others; but most of it was dumped around this coffer-dam.

Q. Over here and out here?

A. Yes, sir.

Q. Did you see Mr. Moore at the time he was hurt?

A. No, sir.

Q. How long after the accident, or when did you first see him?

A. The first I seen him he was sitting down on the bank.

Q. What was he sitting on?

A. Well, I don't remember now. I think he was sitting on a pile of lumber there.

Q. What was he doing?

A. He had his shoe off when I first saw him. He was sitting there.

Q. What did you do?

A. I went to where he was in a little while.

Q. Was there any one there at the time you got there?

A. Yes.

Q. Who was there?

A. Chalfan.

Q. Was there any conversation had with him at that time?

A. Not with me.

Q. Did Mr. Chalfan have any talk with him?

A. Yes.

Q. What was the conversation?

A. He asked him what was the matter, and he said he stepped on a nail.

Q. Was there any further conversation?

A. Not that I heard.

Q. Did he state anything about where the nail was?

A. He said it was in the board.

Q. Did he point to the board, or did he not?

A. No, not when I was there. He pointed off that way. Now, I don't know whether he meant to the board, or what it was.

Q. Where were those boards that he pointed to?

A. They was all around on the shore there.

Q. On the bank where he was sitting?

A. There were boards scattered all over there.

Q. How many boards were there there?

A. Oh, I don't know. There must have been two or three thousand boards—a pile of them.

Q. They came clear from the top of the pier?

A. Yes, sir.

Q. How long were those boards?

A. Well, there would be some of them would be probably—I think two-foot was the shortest piece they could use.

Q. Two feet long, some of them?

A. Yes, sir. That would be the shortest piece. Very seldom they used a piece two feet long; at times they did. And there were some fourteen or fifteen feet, I suppose. I don't know just how long.

Q. That was about the longest?

A. Yes, sir.

COURT: How long did you say?

A. Between two feet and fifteen feet, as near as I remember. I never measured them.

Q. Do you know the width of this coffer-dam?

A. I will tell you, I have heard them speak of it. I think they say it was 20 feet to 24 feet—something like that. I am not positive about that, though.

Q. From one side to the other?

A. Yes, sir.

Mr. GILTNER: Don't state what anybody told you, Mr. Hoffstatter. I think the Court will tell you that. Only state what you know.

Q. Mr. Hoffstatter, just hold that a minute (Exhibit 1). Pointing to the letter "G" between the coffer-dam line and the line marked with a letter "A" to represent the shore line, was there any scaffolding or staging in there?

A. Not that I have seen.

Q. If there had been one there, would you have seen it?

Objected to as calling for a conclusion of the witness.

Objection overruled. Exception allowed.

A. They could have had staging there, but you know I worked there all the time, and I never seen one there, if there was any there.

Q. Was there any staging there the day of the accident?

A. Well, now, I don't know whether there was or not. There might have been plank throwed in there,

because there is quite often plank throwed in there to walk on.

Q. Was there any built staging in there?

A. There was no built staging.

Cross Examination.

Questions by Mr. GILTNER:

Mr. Hoffstatter, where were you when you first saw Tom Moore sitting on the bank?

A. I was on the coffer-dam.

Q. On the coffer-dam?

A. Yes, sir.

Q. And who was on the coffer-dam with you?

A. Mr. Chalfan.

Q. And what did he say to you at that time?

A. Who?

Q. Mr. Chalfan.

A. He said Moore was hurt and he was going up to see what was the matter with him.

Q. And then what did you do?

A. Well, he went up there, and after he went up a little while, why, then I went up.

Q. But you walked around on the float and went over there?

A. Who?

Q. You and Chalfan?

A. Well, now, Chalfan went first. I don't know how he went. But I went along on the coffer-dam to the float, and then went up there, yes, sir.

Q. And did you see the nail that this man stepped on?

A. No, sir.

Q. How long had you been working there that morning, Mr. Hoffstatter?

A. Well, I don't know now. I think somewhere in the neighborhood of an hour and a half, maybe two hours; maybe a little longer, and maybe not quite so long.

Q. Did you see the board that he stepped on, that contained the nail that he stepped on?

A. Well, now, there is lots of boards scattered—

Q. Well, I know, but did you?

A. No, I did not see that one particular board, he pointed right at.

Q. You didn't see the board that contained the nail that he stepped on?

A. No.

Q. These piers that had the forms around them had been stripped down to the water's edge before you came there that morning, had they not?

A. Yes, that time they had. I had worked there before and helped strip them off.

Q. They had been taken off there prior to that time, hadn't they?

A. Yes, sir.

Q. Do you know whether Moore had brought any board over onto the coffer-dam before you saw him sitting on the bank of the river?

A. No, sir, I do not.

Q. You don't know whether he had or not?

A. I couldn't say, no, sir.

Q. Did you have anything to do with shoveling

the gravel away from the pipes?

A. No, sir.

Q. You had nothing to do with that. What company are you working for now?

A. The International Contract Company.

Q. That is a bridge company, is it?

A. Yes, sir.

Q. Is Mr. Dawson working for them?

A. Well, as to that I couldn't answer; I don't know. He has not been for the last two weeks, that I know of.

Q. He was sick the last two weeks, wasn't he?

A. Yes, sir.

Q. Up to the time he got sick, he was working for them?

A. Yes, sir.

Q. Was he superintendent over you over there?

A. I beg pardon? Which place?

Q. Over at Seattle.

A. Yes, sir.

Mr. SENN: Your Honor, we object to that as incompetent, irrelevant and immaterial.

COURT: I don't see what that has to do with this case.

Q. Now, do you know, Mr. Hoffstatter, when you first went to work on that pier with Mr. Chalfan?

A. No, I do not.

Q. Do you know whether you went to work there on the first of October?

A. No, sir.

Q. On the 30th of September?

A. No, sir.

Q. How long did you work after this accident happened to Mr. Moore?

A. How long did I work with Mr. Moore?

Q. No, how long after the accident happened did you work on that pier?

A. Well, I didn't work there at all.

Q. I mean on the coffer-dam?

A. I didn't work—I don't remember—I quit there in October.

Q. Did you quit on the third day? The accident happened on the 2nd day of October, 1911. Now, did you work the next day after that on that pier?

A. I don't know whether I worked on that pier or not, but I worked for the company there.

Q. You don't know whether you worked the next day after Tom was hurt or not, do you?

A. Yes, I worked the next day.

Q. I mean on that coffer-dam?

A. No, I don't remember now whether we did or not.

Q. What was the draft, if you know, of this scow that contained this donkey-engine, that was immediately on the west side of the coffer-dam over here? How much water did it draw? Or did you see a barge on the west side there?

A. Yes, there was a barge there, but I don't know how much it would draw. I should suppose it would draw all the way from four to six feet of water. I am not sure of that. Maybe not so much.

Q. It might have been ten or fifteen, for all you

know? Isn't that a fact?

A. Hardly that much, no.

Q. Well, did you ever measure the water there?

A. Measure the water?

Q. Yes.

A. No. But I know it would be impossible, because a barge is hardly ever over five feet. Sometimes six.

Q. What is that—a barge never draws more than five?

A. Those barges, I say, would hardly ever any of them be built over six or eight feet, so they couldn't draw fifteen feet of water, when they are only that high.

Q. What was the depth of this barge?

A. I don't know.

Q. What was the weight of the donkey-engine that you claim was on that barge?

A. I don't know.

Q. Did you see any one shoveling gravel there that morning?

A. Well, I believe there was some shoveling going on there, yes.

Excused.

J. M. DAWSON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. SENN:

Where do you live now, Mr. Dawson?

A. Seattle.

Q. And what is your work?

A. Bridge work.

Q. And with what company are you?

A. International Contract Company.

Q. How long since you have worked for the Union Bridge & Construction Company?

A. Union Bridge & Construction Company?

Q. Yes.

A. I have put in about five years with them.

Q. How long since you stopped working for them?

A. Since I stopped working for them?

Q. Yes.

A. It is a year ago the first of this year. It has been about fifteen months.

Q. Were you working for the Union Bridge & Construction Company on the 2nd day of October, 1911?

A. Yes, sir.

Q. In what capacity?

A. Assistant Superintendent.

Q. Who was the superintendent there?

A. M. F. ———

Q. You were his assistant?

A. Yes, sir.

Q. What work were you doing on that bridge?

A. Well, I looked after sinking of piers, concrete work, building of the coffer-dams, building of the forms, general work all over.

Q. That was the contract of the Union Bridge

Company to sink those piers?

A. Yes, sir.

Q. Do you know how deep Pier No. 7 was sunk?

A. I think 35 feet.

Q. Below the top of the ground?

A. Yes, sir.

Q. And how high in the air did it project?

A. In the neighborhood of twenty feet.

COURT: That is detail that has been established heretofore. What is the use of going into that?

Mr. SENN: Yes, I think that is so, your Honor.

Q. Did you have in your employ a man by the name of Piltz?

A. Yes, sir.

Q. What kind of work did he do?

A. Well, he worked in the gangs at times. Sometimes I would give him a few laborers to load cement—look after three or four men, something like that.

Q. What wages was he receiving?

A. \$3.00 a day.

Q. What wages did Mr. Moore receive?

A. \$3.00, I believe, was his wages.

Q. Did you ever send Mr. Piltz over to pier No. 7, and instruct him to build any scaffolding or staging?

A. Not to my memory.

Q. What is that?

A. No, sir. Not in my memory. I don't remember doing it.

Q. How do you know that?

A. Well, I had scale men there, such as carpenters, bridge men, that done such work as that. I

didn't trust him to do that class of work.

Q. Was Piltz one of those carpenters?

A. No, sir.

Q. Did he, while he worked for you, have anything to do with building any stagings or scaffolding?

A. Not to my memory, no, sir.

Q. What was his work?

A. Well, common labor.

Q. What position did Mr. Holmes, who testified here this morning, the engineer,—did he work for the Union Bridge Company, or did he have anything to do with the Union Bridge Company?

Mr. GILTNER: That has been gone into, your Honor. He testified he was working for the city.

COURT: What was your question, Mr. Senn?

Mr. SENN: I asked him whether Mr. Holmes was in the employ of the Union Bridge & Construction Company, or in whose employ he was at the time of this accident.

COURT: He can answer that question, if he knows.

A. He was in the employ of the Modjeski Engineering Company, I understood.

Q. And in whose employ were they?

A. They were in the employ of the city, looking after the construction of the Broadway Bridge.

Q. They were the City Engineers on the job?

A. They were City Engineers.

Cross Examination.

Questions by Mr. GILTNER:

How long have you known Mr. Piltz?

A. How long have I known him?

Q. Yes.

A. I have known him but a short time. I don't remember just how long he worked there. He came on the job, and wanted a job.

Q. Came when they first started the job there?

A. How is that?

Q. He came on to work there when they first started the job?

A. No, I think the job had been running quite a while before he came there. I couldn't give the date that he went to work.

Q. You remember him, don't you?

A. Oh, yes, I remember him.

Q. How long do you say you have been working for that company?

A. The Union Bridge Company?

Q. Yes.

A. I put in about five years with them.

Q. And you claim that you only knew him a short time before they commenced to work on the bridge there, or after they commenced to work on the bridge?

A. After he began to work there.

Q. You don't know whether he was working for the company or not before that?

A. No, sir.

Q. Now, I didn't catch your testimony—did you testify that you never sent him over to the East pier at any time with any men?

A. I did.

Q. Did you testify to that?

A. I testified that I did not send him over there.

Q. You gave a great many orders during the time you were there, did you not?

A. Yes, sir, I gave orders.

Q. And you gave him orders, too, didn't you?

A. Yes, sir.

Q. You gave him a great many orders?

A. I received my orders from the Superintendent, and I carried the work out during the day.

Q. You gave him a great many orders, too, didn't you?

A. Oh, yes, yes, sir.

Q. And do you know when he quit working there?

A. I couldn't give the date of the time the man quit, but I remember when he quit.

Q. What?

A. I remember about him quitting there.

Q. What kind of a man was he?

A. Piltz, you have reference to?

Q. Yes.

A. Well, he was just an ordinary man.

Q. He was a good man, wasn't he?

A. Well, he was no extraordinary man.

Q. I know, but reliable man; that is, truthful man?

A. Truthful?

Q. Yes.

A. Well, to a certain extent, I guess he was. I couldn't say nothing again' the man.

Q. About as truthful as men go, wasn't he? That is what you mean, isn't it?

A. Well, he was average. I couldn't say nothing again' the man. I don't know anything against the man.

Q. That is what I mean, Mr. Dawson.

A. Yes, sir.

Q. You are positive, now—it is not possible that you were mistaken when you said that you never gave him any orders to do anything over there on the East pier? You are positive of that, aren't you?

A. No—beg pardon. That I did not send him there to build a scaffold.

Q. No, but you sent him over there to assist? You sent him with some men over there to assist in stripping the piers, didn't you?

A. That might be.

Q. And he had charge of those men, didn't he?

A. He had charge of the laborers, yes.

COURT: Who had charge of the men?

Mr. GILTNER: Mr. Piltz.

Q. Do you remember when that was?

A. When they were stripping that pier?

Q. No, when you sent him over there?

A. No, sir, I do not.

Q. You didn't go over there after they had stripped the piers, did you?

A. Oh, I have been around the pier a number of times after it was stripped.

Q. Well, I mean before this?

A. And before it was stripped.

Q. After you sent Piltz over there, do you remember of ever going over?

A. After Piltz had been there?

Q. Yes.

A. Yes, I used to pass it every morning, and every evening going home.

Q. I mean, were you on the coffer-dam?

A. Being on the coffer-dam—you mean that I was on the coffer-dam?

Q. Yes.

A. I don't know that I was on the coffer-dam myself.

Q. You individually did not do any work yourself there?

A. No, sir, not any more than I could help.

Q. Now, there was a ladder, Mr. Dawson, hanging on the top of the north pier?

A. Yes, sir.

Q. How was that fastened on the top?

A. To my remembrance, I think it was fastened with a line and some bolts in the top of the pier, if I remember right.

Q. And hung down, didn't it?

A. Yes, I think, if I ain't mistaken, I think that is the way it was.

Q. And hung down on the top of the coffer-dam?

A. I think it hung on the float, or near the float. They could step on and off the float and the ladder.

Q. That would be a very dangerous thing, to put

the float on the end of the ladder, that was moving all the time?

A. They could step from the float to the ladder.

Q. Do you swear positively it was on the float?

A. No, I wouldn't, because the float would rise and fall with the tide.

Q. And it might have been on the coffer-dam, for all you know?

A. It might have been on the edge. It was near enough so they could step from the float on the ladder.

Q. You wouldn't think it would be very good judgment to put the end of a ladder on a float that was sinking up and down, where men were working on a pier?

A. We don't use that kind of judgment.

Q. (Redirect) You don't remember of sending Piltz over there to do any work, do you?

A. No, I do not.

Excused.

Mr. SENN: That is our defense, your Honor.

Portland, Oregon, April 15, 1913. 10 A. M.

Mr. GILTNER: If the Court please, Mr. Senn and I have stipulated as to the expectancy of life of Mr. Moore. His expectancy would be 23.80 years.

FREDERICK H. DRAKE, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. GILTNER:

What is your position here in this court?

A. Chief deputy clerk of the United States Court.

Q. What was it on or about the 10th day of December, 1912, when this case was tried before?

A. I held the same position.

Q. I will ask you to state what you hold in your hand there.

A. I hold the drawing marked "Defendant's Exhibit A," introduced at the former trial of this case, and filed on December 12, 1912.

Q. I will ask you who has had the custody of it since that time.

A. In the custody of the clerk.

Q. Is it in the same condition now as it was then?

A. Yes, sir.

Excused.

MARY E. BELL, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. GILTNER:

Miss Bell, what position did you occupy here along about December 10, 1912?

A. I was reporter in the court.

Q. Were you the reporter that reported the testimony in this case before Judge Bean, about the 10th day of December, 1912?

A. I did.

Q. I will ask you to look at this paper, and see if you saw it before.

A. Yes. This paper was given to me at the former

trial, and I marked it.

Q. And what did you mark that?

COURT: Is there any denial of that paper?

Mr. SENN: No, no denial. It was made by one of the witnesses. I don't know whom it was made by.

Mr. GILTNER: I wish to introduce it. I offer this in evidence, then, if the Court please, marked "Plaintiff's Ex. B."

Q. I wish you would turn to Mr. Alexander's testimony there, and read an excerpt there in regard to what he said as to this being a correct representation of the place of the accident on the second day of October, 1911.

A. The question was asked—

Mr. SENN: We object to that as incompetent, irrelevant and immaterial. Mr. Alexander is not a witness in this case.

COURT: Mr. Alexander is here. I think you better call him.

Mr. GILTNER: All right. Call Mr. Alexander then.

Excused.

TOM ALEXANDER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. GILTNER:

Mr. Alexander, look at that map, and state what position did you occupy with the defendant company.

A. I was engineer in charge of their work.

Q. In charge of their work?

A. Engineer in charge of the work.

Q. What?

A. I wasn't superintendent of the work. I was just the engineer.

Q. The engineer in charge of the work?

A. In that business.

Q. Look at that map, and state who made that.

A. This is a sketch I made at the former trial. Just a rough sketch.

Q. State if that was a representation of the place where this accident happened on or about October 2, 1911.

A. Well, that is just about as I remembered it. I made this map here in court.

Q. Well, you testified, did you not, the last examination, that that was practically a correct representation of the place?

A. I said that was a sketch of the place, yes. It is not a complete drawing at all. I told you that at the time.

Q. You told me what?

A. I told you that at the former trial, that it was not a drawing of the place; it was only a sketch, so that I could testify.

Q. Did you not state at that time it was practically a correct representation of the place at the time this accident happened?

A. I said that that was a sketch of the pier as I remembered it.

Q. Yes, that is all. That is right.

Cross Examination.

Questions by Mr. SENN:

Mr. Alexander, did you have Mr. Holmes make this map?

A. Yes, sir.

Q. Why did you have him make it?

A. Because this sketch was objected to in the former trial, and Mr. Giltner said that it was a frame-up on our part, and that we only had Union Bridge Company witnesses; so I went outside and got a man that I thought was not interested on either side; and I went to Mr. Holmes, the engineer for Modjeski, and asked him if he would draw a sketch, or a map, showing the pier, from his notes.

Mr. GILTNER: That is what he testified to.

A. Well, yes, we have his testimony. That is the reason I got Mr. Holmes.

Q. Were you present at any time when he was drawing that sketch?

A. No, sir. I saw the map before it came to court, but I was not there when he made it.

Q. Did you have any notes to make a sketch from?

A. This one?

Q. Yes.

A. No, sir. I made this sketch right on the table.

Q. What is that?

A. You mean this sketch?

Q. Yes.

A. I made this in court right here.

Excused.

MARY E. BELL, recalled for the plaintiff.

Direct Examination.

Questions by Mr. GILTNER:

Miss Bell, did you report the testimony of Mr. Chalfan, a witness in the former trial?

A. I did.

Q. Did you make a copy of his testimony?

COURT: That is admitted, isn't it?

Mr. SENN: Yes.

Mr. GILTNER: Oh, no.

COURT: Didn't you have a copy of the testimony yesterday?

Mr. GILTNER: Yes, but I told you I couldn't find what he had testified to. Now I have found it, and she is going to read it.

Mr. SENN: Your Honor, if she has made a copy of that, I move to have the entire copy introduced as evidence here. I want all of it. I don't think it is fair to a witness to take a question here and there.

COURT: I think counsel can read that part of the testimony if he wants to, to the jury. But if Mr. Senn desires to read other testimony in connection with it, he has a right to do that. It is not necessary to have Miss Bell testify to that matter. You have got a copy there. Let it be admitted to be a copy, and you can read from it. You had that record yesterday, and it was admitted to be the testimony of the witness. There is no necessity of going further.

Mr. GILTNER: You admit that is a correct copy of this testimony, do you?

Mr. SENN: Just ask Miss Bell if that is the testi-

mony.

Q. Miss Bell, did you make this copy of this testimony?

A. It was made under my direction. I didn't do the actual writing of it.

Q. I will ask you if that is a correct copy of your notes of the testimony?

A. Yes; made and compared.

Mr. SENN: We have no objection to it.

Cross Examination.

Questions by Mr. SENN:

Have you also Mr. Hoffstatter's testimony transcribed?

A. I have.

Q. Have you that with you?

A. I have.

Mr. SENN: I would like to offer that in evidence.

Mr. GILTNER: I object to his offering all of Hoffstatter's testimony. This is for the purpose of impeachment.

COURT: You have identified Mr. Hoffstatter's testimony?

A. I have it here with me.

COURT: You want that to use?

Mr. SENN: I want it introduced in evidence, so we can refer to it at the time of the argument to the jury. That is all.

Mr. GILTNER: I object to it. The object of this testimony really is for the purpose of impeaching these two men. And I am only entitled under the law,

as I understand it, to read that part of the testimony which I called their attention to. To introduce all their evidence before this jury would not be proper.

COURT: Both these witnesses have been here in court, and they have been called to testify. That ought to be the testimony before the jury. But if they have made contradictory statements, the former testimony can be introduced to impeach those statements, if the parties desire to do so. But beyond that I do not think the testimony should be introduced in evidence, unless both parties will agree to it.

Mr. SENN: It is agreed that Chalfan's testimony shall be introduced, is it not?

Mr. GILTNER: No, not except to contradict what I put in.

COURT: I think you can read any part of Chalfan's testimony that will explain what Mr. Giltner reads.

Mr. GILTNER: Yes, in explanation, I have no objection to that. Thank you, Miss Bell.

Excused.

Mr. GILTNER: The first part of this testimony I desire to read is a question there yesterday, your Honor, where I asked him in regard to whether he didn't testify that he came off the float, and that Mr. Moore came off the float, and went away. I have found that now, and I want to read it to the jury.

Mr. SENN: Objected to, your Honor, as having been gone into fully, and he read to the jury several times, the witness was on the stand, and it is not proper rebuttal.

COURT: I think you said that that was found in the examination in chief, and also in the cross-examination. You found what was stated in the examination in chief and read that part of it, and you said then that it was better in the cross-examination.

Mr. GILTNER: Well, now, I have found this testimony.

COURT: That on cross-examination?

Mr. GILTNER: Yes.

COURT: Very well.

Mr. GILTNER: This is the testimony of Chalfan, in answer to the questions of the Court—Judge Bean:

“COURT: Where were the boys? A. They were over on the coffer-dam. You see there was a gravel pile up where it had come out, in on the opposite side, and to the river side, where we could walk around there. It run in there quite a little bit. We were digging out around this supply shaft and the main shaft so they could get the plates out, about that much water, I should judge (indicating) and they would have to get their hands down in there; some had rubber boots, some didn't; plenty of rubber boots to put on. Mr. Moore was going over there and he couldn't get across and I told him to get a board to get across. Pretty soon then I hollered to the engineer to give us a pull; we had come up and hitched on to the other side on the coffer-dam; we pulled on that; I got where I could see him and give the signal. Q. Give who a signal? A. The engineer on the barge. Q. Where was this barge? A. It was sitting on the outside piers. Q. Just on the other side of the coffer-dam

from you? A. Yes, sir. Then I passed Mr. Moore sitting on the shore with his shoe off. I says 'What is the matter with you, Tom?' He says he stuck a nail in it, so I went on over; then I went across to the barge, and I think I unhitched, if I remember right. I done the unhitching while the other boys were getting ready to get the supply shaft out. He came out on the end of the barge where I was and said his foot pained pretty bad; I said for him to go on over to the office and have it attended to."

Now, on cross examination, showing what he testified to in regard to where Moore came from, and how he came:

"Q. Do you know how he got from this pier over to where the board was? A. I do not. He was here when I told him to get the board. Q. You don't know how he got over there, do you? A. I do not. Q. Where were you when you gave him the order to go and get it? A. Was where the double crosses are. Q. Where was he when you gave him the order? A. He was right there on the shore. Q. On the shore? A. Yes, sir. Q. But what was he doing on the shore there before you gave him the order to go there? A. He came around by the float. Q. What did he go there for? He was acting under your orders, wasn't he? A. Yes, sir. Q. What was he doing over on this bank here? The work was being done on the pier here? A. It was. Q. The men were working here? A. Yes, sir. Q. Now, if he was over here on the bank when you saw him and when you gave him the order, he wasn't acting under your instructions

at that time, was he? A. He had no boots to work on there. He came and asked me what to do. I told him to get a board and work on the inside. Q. He did come from here? A. He had come from this way then; came by me; passed me. Q. Didn't you just state to this jury you didn't know how he got to this pier—to this bank? A. Not when carrying the board, the second time. Q. That was the first time. Didn't you make the statement you didn't know how he got from this pier over there—you didn't know? Didn't you make that statement? A. Well, he passed me here, going here. Q. Didn't you make that statement to this jury? You didn't know how he got from that pier over on the bank there? A. I might possibly. Q. Now, you have changed your testimony and recall now that you do know, don't you? Mr. Senn: I don't think the witness testified to that at all. Mr. Spencer: I don't think he has changed his testimony. Q. That is a question for the jury. Now, isn't it a fact that Mr. Moore was on this coffer-dam here, and you were here, and you ordered him to go over and get the board to bring over here? A. I was not. Q. Isn't it a fact you ordered him to bring a board from here over on the coffer-dam? A. It is. Q. What? A. It is. Q. And what did you have him bring that board over there for? A. To work on. Q. To work on? A. Yes, sir."

Now, this is testimony, asked Mr. Chalfan by Judge Bean, in regard to the distance from the center part of the coffer-dam to the bank of the river:

"COURT: How far was the east line of this cof-

fer-dam from the east bank of the river; I mean from the water on the east bank of the river? How much space was there between the coffer-dam and the edge of the water? A. Well, now, I should judge about ten or twelve feet; that was in the widest place, but at the corners it wasn't. But in the center it was wider, because it caved in as they dug down more."

Mr. GILTNER: I read now from Mr. Hoffstatter's testimony:

"Q. What was the distance from here to the bank of the river? A. Coffe-dam to the bank? Q. Yes. A. Twelve or fourteen feet; something like that. Q. That is what you think; might have been six or seven? A. I think right in here, I think the two corners was closer to the pier."

T. H. MOORE, recalled in rebuttal.

Direct Examination.

Questions by Mr. GILTNER:

Mr. Moore, you heard Mr. Chalfan testify yesterday in regard to his giving you an order to carry a board from the bank of the river to the coffer-dam, and at the time that he gave you the order he was on the bank of the river. State whether that is true or not.

A. Well, it is not all true. He was not on the bank of the river. He was on the coffer-dam, right close to where I was working at the time he gave me the orders to cross and get the plank.

'Q. Mr. Chalfan and Mr. Hoffstatter yesterday

testified that you sat on the bank of the river and took your shoe off. I wish you would state to this jury whether or not you did anything of the kind.

A. No, sir. I didn't take my shoe off until I got over on the West side, on the docks, near the office of the company, was the first I took my shoe off.

Q. Mr. Chalfan and Mr. Hoffstatter stated that Chalfan had a conversation with you, in which he asked you—that is, on the bank of the river—where you stepped on the nail, and that you said “Over there.” I will ask you if you ever had any such conversation with either of them on the bank of the river?

A. No, sir, I didn't.

Q. Did you ever have any conversation with Mr. Hoffstatter?

A. No, sir.

Q. Did you state what time this accident happened that day?

A. The accident happened?

Q. Yes.

A. About nine o'clock in the morning.

COURT: What time did you go to work?

A. 7:30.

COURT: 7:30?

A. Yes, sir.

Q. The testimony of several of the witnesses here, whose names I cannot remember, stated that this float that was north of the pier was tied.

COURT: He testified about that in the examination in chief—this witness did.

Mr. GILTNER: Do you remember that he did,

Judge?

Mr. SENN: He testified that it was not tied; that it was loose.

Q. Will you state, then, how they got from the float to the coffer-dam?

A. Well, they couldn't get across that way; but I have seen plank laid from the float over to the coffer-dam, and crossing to and fro, getting off on the raft, crossing on the East side of the river. I have seen times that there were plank laid from the raft over to the coffer-dam, a space four to six feet.

Q. Mr. Moore, Hoffstatter and Mr. Chalfan testified that there was a scow with a donkey-engine on it that morning at that place.

A. There was not.

COURT: Didn't he testify to that on examination in chief?

Mr. GILTNER: No.

A. There wasn't anything like that there in the morning while I was there.

Q. They also testified that they were pulling off the frames. What is the fact about that, while you were there?

A. They wasn't pulling no frames while I was there. We was simply shoveling the gravel away from those planks, working to get down to where they was connected.

Q. They also testified—some of the witnesses testified; I think it was Mr. Holmes—that there was dry land near the center of this pier.

COURT: He was asked about that.

Mr. GILTNER: Did we?

COURT: Yes.

Mr. GILTNER: I believe that is all. Take the witness.

Cross Examination.

Questions by Mr. SENN:

You didn't take your shoe off until you got over to the office?

A. No, sir.

Q. You went down and took the boat, and went in a boat across the river, and walked up to the office, and then took your shoe off?

A. I didn't go down. I came right off the cofferdam onto the boat, and I was taken across the river.

Q. You didn't look at your foot or your shoe until after you got there?

A. I looked at the bottom of it, and I knew it hurt me—it run in deep—when I pulled it off.

Excused.

Mr. GILTNER: That is all our testimony.

COURT: Do you rest?

Mr. GILTNER: Yes.

COURT: Do you rest, Mr. Senn?

Mr. SENN: We rest, your Honor. We have nothing more to offer at this time.

Mr. SENN: Your Honor, at this time I want to make a motion for a directed verdict, on the following grounds:

First, that there is not sufficient testimony or evidence of negligence to be submitted to the jury.

Second, that the evidence shows that this was not a staging or a platform of any permanent nature, and the testimony shows that there were three or four or five planks thrown side by side—so Mr. Moore testified; that they were not spiked nor nailed down; that they were two or three inches apart, and were lying there loose; that the planks were about twelve feet long, and that they were thrown on a log that projected out from the bank; that that testimony, your Honor, does not make out an appliance or a place or sidewalk, or staging, or platform such as this company would be responsible for. That was Mr. Moore's testimony, and was the only testimony in this case as to what was there from his standpoint. Now, your Honor, to say that, when you put two or three or four planks side by side—even admitting his testimony for the sake of the argument—that that constitutes a staging or platform without being bolted down or spiked down, or nailed, and they were of that form lumber that was lying all around there—that that would constitute a staging, or platform, or appliance that was furnished by the employer or the master, it seems to me would be going a long way. Not only that, but if there is any testimony here at all of who did this, it was the work of fellow-servants; if anybody put that there, it was some men who simply threw the boards together there, and walked out; and for the negligence of the fellow-servant the company would not be responsible.

Third. That it was one of those risks which he assumed, because at the time of the accident, your Hon-

or, they were engaged in cleaning up, breaking down and taking away the debris, and they were cleaning that stuff up; and where men are engaged in cleaning up, and preparing, and breaking down, there is no law as to a provision of a safe place, and certainly there is no rule providing that safe scaffolding shall be used or made, because at that time they were engaged in the very work of tearing that down. And furthermore, the company had provided a float for him to go upon—a safe place, where they had always gone, where he could have gone, and where he is supposed to have gone—and whenever he took any other way, and was injured by his own negligence, the company was not responsible.

COURT: I will overrule the motion.

Mr. SENN: Save an exception.

[Instructions to the Jury.]

Gentlemen of the Jury:

The Court will instruct you touching the law of this case. The issues are very few. The plaintiff sets up in effect that the defendant, the Bridge Company, had in its possession and control a certain staging that was used for the purpose of the workmen to pass to and fro from the bank to the coffer-dam, and it is contended that the defendant maintained that staging for that purpose; and furthermore it is alleged that that staging was constructed of certain boards taken from the forms used for putting the cement in place in the piers, and that those boards were colored by light color from the cement, and that

one of the boards contained a nail which protruded above the board itself; that the plaintiff, while using that staging, and under a request from the foreman to go across upon the bank and get a board, after he had procured one board and gone back after another, returning with that, stepped on this nail, and the nail protruded through the sole of his shoe and into the bottom of his foot, and thereby he was injured. Now, this is the special allegation of the complaint, and it is alleged that the defendant was negligent in this respect, in using a board of that kind with a nail protruding through it, and leaving it in place for the workmen to pass to and fro upon, and that by reason of so negligently leaving the board in that shape, it allowed the plaintiff to step on the board while using the passageway, and he was injured thereby.

This accident is alleged to have occurred on the 2nd day of October, 1911.

Now, this is the plaintiff's cause of action, and the plaintiff must recover upon this cause, or not at all. He cannot recover upon a cause not alleged in the complaint, and hence he must be confined to the allegations of the complaint for the establishment of the cause of action.

Now, the defense denies, first, that it maintained this staging as a passageway for the workmen. That is a denial, and makes one of the issues in the case. It is claimed further on the part of the defendant that the plaintiff was not hurt on this staging at all, but that he was hurt while upon the bank, in the performance of some duty in getting a board for use at the

coffer-dam, and that while on the bank he stepped on a nail there, and was injured in that respect.

Now, these constitute the simple issues of this case for you to determine.

The defendant sets up, furthermore, three other affirmative defenses. One is that the plaintiff assumed the risk of his employment, and that this was one of the risks of the employment; second, that the accident was due to the carelessness and negligence of the plaintiff himself, and hence that the defendant would not be liable if such was the case; and, third, that the accident was due to the carelessness and negligence of a fellow-servant of the plaintiff, and hence that the plaintiff cannot recover.

Now, such are the issues that you have to deal with and to which you have to give consideration.

The ground of the action is the alleged negligence of the defendant in using the staging in the condition-specified. The plaintiff in this regard has the burden of proof. And what we mean by the burden of proof is that he must make out his case by some preponderance of evidence. If he makes out his case by the weight of the evidence, by some preponderance however little it may be, then he would recover. If the evidence is exactly equal, he could not recover, because there would be no preponderance.

Now, negligence, gentlemen of the jury, may be defined as the doing of some act that a reasonably prudent and careful man would not do under the circumstances, or the omission to do some act or thing which a careful and prudent man would ordinarily

do under the same circumstances.

The employer is not an insurer against accident, but it devolves upon the employer to use all ordinary care and circumspection to provide a safe place in which his workmen are to do their work. The employer is not required absolutely to provide a safe place in which the workmen can work; but he is to use due and reasonable care and precaution to see that his workmen have such a safe place in which to perform their work. When the employer has exercised due and careful attention looking towards the safety of his workmen, then he has discharged all of his duty to the workmen.

Now, with this preliminary, you will first consider whether or not the defendant maintained this passageway, or the staging, as it has been called for the purpose, of use by the men. It is alleged in the complaint that the defendant was in possession of, and in control of a certain staging, and it has been urged at the trial that the defendant maintained that staging for the use of the men. Now, gentlemen of the jury, it is for you to determine whether or not the defendant in fact did control or maintain this staging for the use of the workmen, to cross to and fro from the bank to the coffer-dam. This is a question of fact in the case for your determination, because if the defendant did not attempt to maintain such a staging, did not attempt to control it, or did not attempt to have the men cross to and fro upon that staging, then the defendant would not be liable. It is in evidence here that there was another way provided for the

men to get to and from the shore to the coffer-dam. That was by the float, and up a stairway that was built upon the side of the bank. There is evidence here, somewhat contradictory, as to whether the float was connected with the pier or not; but there is evidence tending to show that there was a way by which the men could pass from the coffer-dam to the bank. Now, it was not obligatory upon the defendant company to maintain more than one way to get to the bank, if it did not so desire; and it was not obligatory upon the defendant company to maintain this staging and provide a way for the men to get to shore from the coffer-dam to the bank over that way. And so it is for you to determine whether or not the defendant company attempted, of its own accord and for the purpose of the use of the men, to provide a way over the staging, or a crossing at that point, for the men to pass to and fro. If you find that the defendant company did attempt to maintain such a way, then that is the end of this case, because the plaintiff must recover by reason of the allegation that the defendant company attempted to provide a way across at that point for the use of the men. If they did not attempt to do that, or did not assume to provide a way at that point, then that is the end of this case, and you will have to find for the defendant.

If, however, the defendant company did undertake to provide and maintain a way at that point, then it will be for you to determine another question which arises by the allegation of the defendant itself, that the plaintiff was not hurt on this staging, but was

hurt upon the bank; and you will determine from all the evidence in this case whether or not that allegation is true.

If the plaintiff was upon the bank at the time he ran the nail into his foot, or stepped upon the nail which protruded into his foot, why, then the defendant must prevail in this case, because the plaintiff has not made out the case alleged in the complaint. And that is a matter for you to determine.

Now, in this connection I will say to you that, as I have indicated before, it was not incumbent upon the defendant company to provide a crossing at this particular point for the use of the men. If the men themselves, in the work of stripping the pier of the forms thereon, threw these boards out upon the other side and upon the bank, and if they themselves, without the knowledge or consent or the direction of the defendant, provided themselves a crossing there, temporary crossing, why, that would be a matter that the defendant company would not be liable for. And if the men used such a crossing, that was temporarily provided by the men themselves, without the knowledge, without the consent or authority, or without the direction of the defendant company, then the plaintiff would have assumed the risk of the use of that crossway as he assumed the risk of his work, or being upon the bank itself, if you find that he was hurt upon the bank.

The employee always assumes the ordinary risks incident to his employment; and in this case, if he was injured on the bank, or if he was injured on a tempo-

rary crossing that was provided by the men themselves, without the knowledge or without the direction of the defendant company, then that would be a risk that he assumed by his employment.

So far as the defense is concerned, as it is alleged that the plaintiff assumed the risk of his employment, what I have said to you will explain all there is in this case respecting the assumption of risk. If the defendant attempted to maintain this crossway, it was the defendant's duty to use due care and precaution to see that it was in order, and the plaintiff would not assume any risk as to the crossway which was provided by the defendant company, if it did so provide a crossway.

As to the defense of carelessness or negligence on the part of the plaintiff, there appears to be no evidence in this case upon which to present that issue to you. All the evidence of care and circumspection on the part of the plaintiff is found in what the plaintiff himself testified to, and in that evidence there appears to be no part of it from which an inference may be drawn that he himself was negligent or careless.

And so with the fellow-servant defense. There is no evidence here to indicate, or from which an inference may be drawn, that any fellow-servant of the plaintiff contributed to his injury, or did a careless act or thing which resulted in his injury. Hence that defense I think not to be in the case.

Now, gentlemen of the jury, you are the judges of the effect of the evidence in this case. The court gives you the law, but you must determine as to the

effect of the evidence and what the facts are. You must determine as to the credibility of the witnesses and the weight of the testimony. You determine as to the credibility of the witness from the manner in which the witness testifies upon the stand, how he demeans himself while there, and how he answers and refrains from answering questions, or whether he seems to be fair and candid in what he is telling. The weight of testimony is not always determined by the number of witnesses that may testify to a certain fact. It might happen that a number of witnesses testifying to one fact would not impress you as strongly as one or two testifying to the same fact. You must be governed by the impression or conviction that the testimony brings to your mind, whether it is testified to by few or by more witnesses.

A witness is presumed to speak the truth, but that may be overcome by the manner in which he testifies and by evidence given that will discredit his testimony. And in this connection, I may say to you that a witness who is false in one thing is to be distrusted in all; and in determining the credibility of the witnesses you may take into consideration the interest the witness may have in the controversy in hand.

I will say to you also in this connection, that what I have said or may have indicated at any time, from which you can draw an inference that the court has an opinion in the case one way or the other on the question of fact, you must disregard altogether, and

find according to the bearing and conviction which the testimony has brought to your minds.

And I will further say that in this case a motion was made in your presence asking the court to direct a verdict for the defendant. The court of course passed upon that motion, and denied it, but that incident or circumstance should not have any bearing upon your minds in the case. The court only passed upon a question of law, and you are dealing with a question of fact.

Now, the measure of damages, I will give you from Judge Bean's instruction in the former case:

If you find, under the rules as I have given them to you, that the defendant company is liable to the plaintiff, then it will be necessary for you to ascertain and determine the amount of money that he is entitled to recover as a compensation for the injury. In doing this you have a right to consider his age, which is 46 years. His expectation of life, or his probable length of life, according to the experience of persons versed in such matters, is 23.80 years. You have a right to take that into consideration. You also have a right to consider the pain and suffering incident to this injury, the time the plaintiff was confined to the hospital, his loss of employment, his impaired ability, and, taking all these into consideration, ascertain and determine what, in your judgment, would be a fair and reasonable compensation to him for the injury, if you believe it due to the fault or negligence of the defendant company.

If there is anything I have overlooked, I would be glad to hear it.

Mr. GILTNER: Simply this, your Honor: In order to get it clear before the jury, I wish you would instruct the jury that where the master undertakes by his laborers to make a place for the servants to work, then the laborer in making that place to work acts as the vice-principal, and his act is the act of the master, if he fails to make it a reasonably safe place in which to work.

COURT: I have already stated to the jury that if the defendant company maintained this way, and I will say further, if it maintained it by itself, or through its foreman or superintendent.

Mr. GILTNER: Yes, that is all I care for.

COURT: They understand that. I thought I made it plain. Are there any exceptions to the charge?

Mr. SENN: No, your Honor. We are satisfied.

[Endorsed]: Filed June 4, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 4 day of June, 1913, there was duly filed in said Court, a Petition for Writ of Error in words and figures as follows, to wit:

[Petition for Writ of Error.]

*In the District Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

THE UNION BRIDGE & CONSTRUCTION
COMPANY, A CORPORATION.

Defendant.

The Union Bridge & Construction Company, a corporation, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury and the judgment in the above entitled action, entered on the 17th day of April, 1913, by which it was adjudged that said plaintiff take judgment against this defendant in the sum of Nine Thousand (\$9000.00) Dollars, and costs, comes now by its attorney, F. S. Senn, and petitions said Court for an order allowing said defendant to prosecute a writ of error to the Honorable the United States Circuit Court of Appeal for the 9th Circuit, under and according to the laws of the United States on that behalf made and provided; and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of said security all further proceedings in this Court be suspended and stayed until the determination of said writ of error, and your petitioner will ever pray.

F. S. SENN,

Attorney for defendant.

[Endorsed]: Petition. Filed June 4, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 4 day of June, 1913,
there was duly filed in said Court, Assignments
of Error in words and figures as follows, to wit:

[Assignments of Error.]

*In the Circuit Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

Now comes the defendant above named and in connection with its petition for writ of error in the above entitled action suggests that there was error on the part of the District Court of the United States for the District of Oregon in regard to the matters and things hereinafter set forth, and defendant makes this, its,

ASSIGNMENT OF ERRORS

I.

That after the introduction of all the testimony on the part of both the plaintiff and defendant, the defendant moved the Court for a directed verdict on the following grounds:

"Mr. Senn: Your Honor, at this time, I want to make a motion for a directed verdict, on the following grounds:

First. That there is not sufficient testimony or evidence of negligence to be submitted to the jury.

Second, that the evidence shows that this was not a staging or platform of any permanent nature, and the testimony shows that there were three or four or five planks thrown side by side—so Mr. Moore, testified; that they were not spiked nor nailed down; that they were two or three inches apart, and were lying there loose; that the planks were about twelve feet long and that they were thrown on a log that projected out from the bank; that that testimony, your Honor, does not make out an appliance or a place or sidewalk or staging, or platform such as this company would be responsible for. That was Mr. Moore's testimony and was the only testimony in this case as to what was there from his standpoint. Now, your Honor, to say that, when you put two or three or four planks side by side—even admitting his testimony for the sake of the argument—that that constitutes a staging or platform without being bolted down or spiked down, or nailed, and they were of that form lumber that was lying all around there—that that would constitute a staging, or platform or appliance that was furnished by the employer or the master, it seems to me would be going a long way. Not only that, but if there is any testimony here at all of who did this, it was the work of fellow servants; if anybody put that there, it was some men who simply threw the boards together there, and walked out, and for the negligence of the fellow servant the company would not be responsible.

Third. That it was one of those risks which he assumed, because at the time of the accident, your Honor, they were engaged in cleaning up, breaking down and taking away the debris, and they were cleaning that stuff up; and where men are engaged in cleaning up, and preparing, and breaking down there is no law as to a provision of a safe place, and certainly there is no rule providing that safe scaffolding shall be used or made, because at that time they were engaged in the very work of tearing that down. And furthermore, the company had provided a float for him to go upon—a safe place, where they had always gone, where he could have gone, and where he is supposed to have gone—and whenever he took any other way, and was injured by his own negligence, the company was not responsible.

Court: I will overrule the motion.

Mr. Senn: Save an exception."

That said motion was overruled and an exception allowed by the Court. That the Court erred in overruling said motion for a directed verdict.

II.

That after the verdict was rendered in the above entitled action the defendant filed a motion for a new trial on the following grounds:

"First: Excessive damages appearing to have been given under the influence of prejudice and passion."

Second: Error in law occurring at the trial and excepted to by the party making this motion, and in

support of said motion the defendant herein presents the testimony taken at the time of said trial, and the whole thereof, and presents its authorities and brief."

That said motion after due argument was overruled. That the Court erred in overruling said motion and duly allowed an exception to its order allowing said motion to be overruled.

F. S. SENN,
Attorney for Defendant.

[Endorsed]: Assignment of Errors. Filed June 4, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 4 day of June, 1913, there was duly filed in said Court, an Order, in words and figures as follows, to wit:

[Order Allowing Writ of Error.]

*In the District Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

On this 4th day of June, 1913, came the above named defendant by F. S. Senn, its attorney, and filed herein and presented to the Court its petition praying

for the allowance of a writ of error, intended to be urged by the defendant, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered on the 17th day of April, 1913, duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and such other and further proceedings may be had as may appear proper in the premises.

On Consideration whereof the Court does hereby allow the said writ of error and that citation issue as by law provided.

It is further ordered that the amount of the supersedeas bond to be given by said defendant be and the same is hereby fixed at the sum of Eleven Thousand Dollars with good and sufficient surety to be approved by this Court which bond now being filed with the Aetna Accident and Liability Company, as surety is hereby approved and execution issued herein is recalled and stayed.

Dated June 4, 1913.

CHAS. E. WOLVERTON,
Judge.

[Endorsed]: Order. Filed June 4, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 4 day of June, 1913, there was duly filed in said Court, a Bond on Appeal, in words and figures as follows, to wit:

[Undertaking on Appeal.]

*In the District Court of the United States for the
District of Oregon.*

T. H. MOORE,

Plaintiff,

vs.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

KNOW ALL MEN BY THESE PRESENTS:

That we, the Union Bridge and Construction Company, a corporation of the State of Missouri, as principal and The Aetna Accident & Liability Company of Hartford, Connecticut, as surety are held and firmly bound unto T. H. Moore, in the sum of Eleven Thousand Dollars, to be paid to the said T. H. Moore, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 2nd day of June, 1913.

Whereas, the above named Union Bridge and Construction Company has applied for and obtained a writ of error to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, to reverse the judgment rendered in the above entitled cause by the District Court of the United States for the District of Oregon.

Now therefore, the condition of this obligation is such that if the said Union Bridge and Construction

Company shall prosecute said writ to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

UNION BRIDGE & CONSTRUCTION COMPANY,

By F. S. SENN,

Attorney in Law and in Fact.

THE AETNA ACCIDENT & LIABILITY COMPANY,

By W. E. PEARSON,

Its Resident Vice President.

Attest: F. S. SENN,

Its Resident Assistant Secretary.

THE AETNA ACCIDENT & LIABILITY COMPANY,

By McCORGER, BATES & LIVESLY,

Its Local & General Agents.

By W. E. PEARSON,

Member of Firm.

The within bond is hereby approved this 4th day of June, 1913.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Bond. Filed June 4, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 12 day of June, 1913, there was duly filed in said Court, a Writ of Error, in words and figures as follows, to wit:

[Writ of Error.]

*In the United States Circuit Court of Appeals
for the Ninth District.*

THE UNION BRIDGE & CONSTRUCTION
COMPANY, A CORPORATION.

Plaintiff in Error,

vs.

T. H. MOORE,

Defendant in Error.

THE UNITED STATES OF AMERICA—ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA.

To the Judge of the District Court of the United
States for the District of Oregon:

GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Chas. E. Wolverton, one of you, between T. H. Moore Plaintiff and Defendant in Error, and Union Bridge & Construction Co., Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Cir-

cuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD DOUGLAS WHITE,

Chief Justice of the Supreme Court of the United States this 12th day of June, 1913.

(Seal)

A. M. CANNON,

Clerk of the District Court of the United States for the District of Oregon.

[Endorsed]: Writ of Error. Filed June 12, 1913.

A. M. CANNON,

Clerk United States District Court.

And afterwards, to wit, on the 14 day of June, 1913, there was duly filed in said Court, a Citation on Writ of Error in words and figures as follows, to wit:

[Citation on Writ of Error.]

UNITED STATES OF AMERICA,

District of Oregon.—ss.

To T. H. Moore, defendant in error, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Ap-

peals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein The Union Bridge & Construction Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 13th day of June, in the year of our Lord, one thousand, nine hundred and thirteen.

CHAS. E. WOLVERTON,

Judge.

[Affidavit of Service.]

State of Oregon,

County of Multnomah.

I, F. S. Senn, being the attorney for the defendant in the within matter, hereby certify that I did on this 13th day of June, 1913, serve the within Writ of Error on the attorneys for the plaintiff in the within matter by leaving at the office of Giltner and Sewall, 1125 Yeon Building, Portland, Oregon, a true and correct copy and the whole thereof, of the within Writ of Error. That said Giltner & Sewall, are the attorneys of record of the plaintiff within, and that said certified copy of the within was left with the stenographer in the office of said Giltner and Sewall, with the request that said certified copy be delivered to

said Giltner & Sewall immediately upon their return to their said office. That both of said attorneys were absent from their said office when this affiant called to serve said Writ.

[Seal]

F. S. SENN.

Subscribed and sworn to before me this 13th day of June, 1913.

LOUIS A. RECKEN,
Notary Public for Oregon.

[Endorsed]: Citation on Writ of Error. Filed June 14, 1913.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 23 day of June, 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit:

[Order Certifying Up Exhibits.]

*In the District Court of the United States for the
District of Oregon.*

No. 5568.

June 23, 1913.

T. H. MOORE,

Plaintiff,

v.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

Now, at this day, it appearing that plaintiff's exhibits A and B introduced in evidence upon the trial of this cause, should be inspected by the Appellate

Court upon the appeal herein ;

It is Ordered that said exhibits A and B be certified up with the record to the United States Circuit Court of Appeals, Ninth Circuit.

And afterwards, to wit, on the 23 day of June, 1913, there was duly filed in said Court, an Order in words and figures as follows, to wit :

[Order Enlarging Time to File Transcript.]

*In the District Court of the United States for the
District of Oregon.*

No. 5568.

June 23, 1913.

T. H. MOORE,

Plaintiff,

v.

UNION BRIDGE & CONSTRUCTION COM-
PANY, a corporation,

Defendant.

Now, at this time, good cause appearing, it is Ordered that the time for filing and docketing defendant's transcript of Record in the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is enlarged and extended to and including the 1st day of August, 1913.

CHAS. E. WOLVERTON,

Judge.

